Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

PETER LEHMAN,

Petitioner,

vs.

STATE OF MAINE,

Respondent.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Must a warrant authorizing the search of computer hardware and software and computer network systems be limited to a search for the particular files, images or documents for which the police have probable cause to search where the First Amendment presumptively protects the vast amount of information and data contained in such computers and computer systems?

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OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court, dated July 30, 1999, is reported at 1999 Me. 124. A copy is reproduced at Appendix 1-12 (hereafter "App."). The order denying the motion to suppress and the transcript of the trial court's oral ruling on the motion to suppress are reproduced at App. 13-17. The order allowing the partial inventory of items seized to be placed on the record as signed by Chief Justice Wathen of the Maine Supreme Judicial Court with the attached partial inventory of items seized is reproduced at App. 18-55.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257 and seeks review of a judgment of the Maine Supreme Judicial Court entered on July 30, 1999.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . . .

The Fourth Amendment to the Constitution of the United States provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against

> unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The relevant state statutes are 17-A M.R.S.A. § 254 (Supp. 1998); 17 M.R.S.A. § 2922 (1983 & Supp. 1998); 17 M.R.S.A. § 2924 (Supp. 1998). They are reproduced at App. 56-59.

STATEMENT OF THE CASE

On September 30, 1997, Detective Steven Reece of the Portland Police Department submitted an affidavit to the Cumberland County District Court in support of a search warrant that would allow the search for and seizure of "evidence of the commission or attempted commission of the crimes of Sexual Exploitation of a Minor, Title 17, Section 2922, and Possession of Sexually Explicit Materials, Title 17, Section 2924." App. 66. Attached to the affidavit were the statements of three girls, each of whom alleged that Petitioner had used a digital camera to photograph them unclothed. Two of the girls alleged he had downloaded the contents of the camera into a computer at his house. Search Warrant dated September 30, 1997, at 18, 25. That same day, a District Court Judge issued a warrant that authorized the search of petitioner, petitioner's home, his office and automobile, and, because he was a professor at the University of Southern Maine, the *entire* computer system of the University of Maine. App. 60-61. In pertinent part, the warrant read as follows:

Property or Article(s) to be Searched for and seized:

1. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of Theresa Peavey, DOB 3/23/79.

2. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of Koral Schirrmacher, DOB 7/17/81.

3. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of Allison O'Leary, DOB 9/13/84

4. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of minors.

5. Photographic film which appears to be exposed but unprocessed.

6. **All computer equipment and computer related equipment, including, but not limited to laptops, monitors, keyboards, printers, mice, modems, hard drives, CD ROMS, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operations of systems and programs, which Peter Lehman would have been able to access, including but not limited to, copies of the contents thereof.**

7. Digital cameras, cameras and camera equipment.

* * * *

9. All computer related records, including, but not limited to, Internet provider records, access codes, and passwords.

App. 61-62 (emphasis added).

Pursuant to the warrant, police searched the house and office of petitioner, the computer system of the University of Maine and petitioner's automobile. The University's *entire* computer system was shut down for a significant period of time while the search was conducted. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, March 5, 1998, at 46. Within petitioner's home, police officers searched the second floor, first floor and basement and seized, among other things, three computers, over 400 computer disks, commercial compact discs, manuals for computer programs, and other computer hardware. The three computers and the computer disks taken from petitioner's home contained hundreds of different files, most of which were irrelevant to the investigation and included personal letters, diaries, correspondence, financial records, petitioner's scholarly writings, and academic materials related to petitioner's sociology classes that he taught at the University of Southern Maine, including all class records, and confidential recommendations for students. Other computer disks contained texts of books, manuals for computer programs and other files irrelevant to the search. *See Partial Inventory of Computer Hardware and Software*, App. 18. Police seized hundreds of other irrelevant items, including: videotapes, magazines, a pair of pliers, a screwdriver, telephone wires, compact discs of Bach Motets, Mozart Horn Concertos, and James Galway's Christmas Carols, bills, and receipts. App. 20-23;

Superceding/Supplemental Search Warrant dated October 10, 1997.

Of all the items seized, only one, a hard drive component in a box in the basement, contained any evidence of criminal activity. Thus, of the items seized, at least 407 computer-related items, as well as a substantial number of non-computer-related items, were totally irrelevant to the prosecution. Despite that irrelevance, as of March 5, 1998, approximately 5 months after the search, police still had neither produced an inventory of the items taken nor returned them.[1]

An indictment returned on December 4, 1997, charged petitioner with 54 counts of sexual exploitation of a minor (17 M.R.S.A. § 2922) and one count of sexual abuse of a minor (17-A M.R.S.A. § 254). All the counts were based on digital images retrieved from the hard drive taken from petitioner's basement. Only 24 of the 54 sexual exploitation counts, however, involved minors whose images were sought on the warrant (and for which probable cause existed), while 30 of those counts were for sexual exploitation (digital images) of minors whose images were not identified on the warrant. App. 71. The sexual abuse count similarly involved a minor identified on digital images from the hard drive seized from the basement but who was not identified as a person whose

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[1] As of February 24, 1999, the police had still not provided a complete inventory of the items seized. Motion, Pursuant to M.R.Crim.P. 39(g), to have Defendant's Partial Inventory of Computer Hardware and Software Included in the Record on this Appeal, Law Docket No. CUM-98-503, February 24, 1999.

image was to be seized in the warrant. Petitioner pled not guilty to all counts.

A motion to suppress was filed on January 20, 1998, and heard on March 5, 1998. The motion raised numerous Fourth Amendment violations, including general overbreadth, whether the "scrupulous exactitude" standard should apply, and a lack of probable cause to support the scope of the search. *Joint Motions to Suppress Evidence Pursuant to Rule 41A(a), Me.R.Crim.P. and for Return of Seized Property Pursuant to Rule 41, Me.R.Crim.P. with Incorporated Memorandum*, Docket No. CR-97-1874, January 19, 1998, at 2, 9-22. The motion was denied. The court found that the search warrant was supported by probable cause and that the search was not overbroad but did not address the "scrupulous exactitude" argument. App. 13-17.

On April 17, 1998, petitioner entered a conditional guilty plea, specifically preserving for appeal the denial of his motion to suppress. On September 2, 1998, petitioner was sentenced to 5 years imprisonment on the sexual exploitation of a minor counts and 4 years with all but one suspended on the sexual abuse of a minor count. Petitioner appealed to the Maine Supreme Judicial Court on September 4, 1998, which denied his appeal on July 30, 1999, holding that the search was not generally overbroad, that the "scrupulous exactitude" standard did not apply to the warrant, and that the warrant was supported by probable cause. App. 8-12. Petitioner is currently in execution of the sentence at the Downeast Correctional Center in Thomaston, Maine.

REASONS FOR GRANTING THE WRIT

Pursuant to Supreme Court Rule 10(b), petitioner requests that the petition be granted because the decision of the Maine Supreme Judicial Court conflicts with several federal court decisions on an important question of Fourth Amendment law: the application of well-settled principles – particularity, scrupulous exactitude, and other requirements designed to prohibit general warrants and "rummaging" through peoples' papers and homes – to searches and seizures involving computer hardware and software containing multitudes of files, documents, images, and data. Because of our society's ever-increasing reliance on computer and electronic communications as the preferred medium for the exchange of ideas and information, and because this split in authority creates tremendous uncertainty in this evolving and important area, the petition for a writ of certiorari should be granted.

I. THE CONSTITUTIONALITY OF A SEARCH WARRANT ALLOWING THE SEARCH OF *"ALL* COMPUTER EQUIPMENT AND COMPUTER RELATED EQUIPMENT . . . INCLUDING . . . HARD DRIVES, CD ROMS, COMPUTER DISCS, TAPES . . . " AND AN *ENTIRE* COMPUTER SYSTEM WHERE THERE IS ONLY PROBABLE CAUSE TO SEARCH FOR AND SEIZE CERTAIN EASILY ISOLATED IMAGES PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS DIVIDED THE LOWER COURTS.

This Court has held that search warrants must meet the particularity requirement of the Fourth Amendment

both in particularly describing the items to be seized and in limiting the search to those items for which there is probable cause to seize. This Court has not yet ruled, however, on how traditional Fourth Amendment particularity standards apply to broad searches of computers, and computer-related equipment, including computer files and software and entire computer systems, when the probable cause supporting the warrant goes to a very limited number of the vast universe of computer files sought. The lower courts have decided this issue inconsistently. This Court's guidance is necessary to ensure that the issue is decided in the future with uniformity and with strict adherence to the mandates of the Fourth Amendment.

In deciding the search here was not overly broad, the court below relied on several cases – *United States v. Upham*, 168 F.3d 532 (1st Cir. 1999), *United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997) and *Davis v. Gracey*, 111 F.3d 1472 (10th Cir. 1997) – in which the courts upheld generically worded warrants that allowed, respectively: "any and all computer software and hardware, . . . computer disks, disk drives . . . ", *Upham* at 535; "computer equipment and records", *Lacy* at 745; "computer equipment used to operate the [illegal] bulletin board, including two computers, as well as monitors, keyboards, modems, and CD-ROM drives and changers", *Davis* at 1476. The court cited those cases for the proposition that "when a warrant is issued to seize all computer software and hardware to recover computer images, courts have refused to conclude that the warrant is unconstitutional because of a

failure to particularly describe the items to be seized." App. at 8-9.[2]

In contrast, the Ninth and Tenth Circuits and the federal district court for the Southern District of New York have all held such broad computer searches unconstitutional. In *United States v. Carey*, 172 F.3d 1268, 1275-1276 (10th Cir. 1999), the court held that to be constitutional, a search of computer files must incorporate an intermediate step of sorting various types of documents and then only search the ones supported by probable cause. When there are too many documents to be sorted on site, law enforcement agents may hold the documents until a magistrate approves the conditions and limitations of a further search. *Id.* at 1275. In *In re Grand Jury Investigation Concerning Solid State Devices, Inc. v. United States*, 130 F.3d 853 (9th Cir. 1997), the Ninth Circuit held unconstitutional a search warrant that allowed the search of, among other things, "computers and computer systems including central processing units . . . fixed disks, floppy disk drives and diskettes . . . " because the probable cause supporting the warrant did not support searching the panoply of items listed in the warrant. Finally, in *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F. Supp. 11 (S.D.N.Y. 1994), the court held a subpoena for computer documents unreasonably broad when it allowed the search and seizure of unrelated computer

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[2] As further evidence of the confusion among the lower courts, the *Upham* court adopted a "container" analogy to uphold a search of all computer hardware and software, while the *Davis* court rejected that same analogy. *Compare Upham*, 168 F.3d at 536, *to Davis*, 111 F.3d at 1480.

records as well as relevant ones: "[T]here are easily separable categories of requested documents that undoubtedly contain no relevant information." *Id.* at 12.

These decisions are consistent with and build on decisions in both the Ninth and Fourth Circuits holding that where documents that are evidence of a crime are intermingled with other documents, seizure of all the documents is impermissible. In *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982), the court adopted the American Law Institute's Model Code of Pre-Arraignment Procedure under which seizure of intermingled documents requires that irrelevant documents be impounded and held until the presiding official can either hold a hearing on the further search of the documents, or specify the conditions and limitation on the further search as may be appropriate to prevent unnecessary or unreasonable invasion of privacy. *Id.* at 595-596. *See* American Law Institute, *1975 Model Code of Pre-Arraignment Procedure*, Section SS 220.5(2) and (3); *see also United States v. Shilling*, 826 F.2d 1365, 1369 (4th Cir. 1987) (adopting same test); Raphael Winick, *Searches and Seizures of Computers and Computer Data*, 8 Harv. J.L. & Tech. 75, 106-107 (1994); 2 Wayne R. LaFave, *Search and Seizure*, § 4.6(d) at 575, n. 104, 104.1 (3rd ed. 1996 & Supp. 1998).

The conflict among the courts reflects confusion over the appropriate standard. That confusion is underscored by the other proffered basis for the lower court's decision – that the warrant was constitutional because "[t]he description of the computer equipment to be seized was 'as specific as the circumstances and the nature of the activity under investigation permit[ted].' " *State v. Lehman*, 1999 ME 124 ¶ 10 (citing *Davis*, 111 F.3d at 1478).

This view is fundamentally flawed both factually and legally. The description used in the warrant could have easily been more specific (even though it still may have been inadequate). For example, the warrant could have specified computer-related items that related to the alleged crime, as the first paragraphs, which particularly identified three minors whose images were to be seized, did. App. 61-62. It is certainly hard to understand how a search of a University's *entire* computer system without any limitation or particularization of what is to be searched for can be supported. Not only was the warrant improper as to petitioner, but it also authorized the invasion of the privacy of countless other users of the University's computer system.

Moreover, the lower court's view was premised on a misreading of an exception to the particularity requirement. That exception had its origins in cases where generic items (e.g., stolen goods where one item may not materially vary from the next) were not required to be particularly described because it was virtually impossible to identify distinguishing characteristics among them. *See, e.g., Steele v. United States No. 1*, 267 U.S. 498 (1925) ("cases of whiskey"); *United States v. Scharfman*, 448 F.2d 1352, 1353 n. 1 (2nd Cir. 1971) ("fur coats, stoles, jackets and other finished fur products, books, records and other fruits and instrumentalities"); LaFave, *supra* § 4.6(a) n. 19. Such an exception is not appropriate as a standard in computer data cases where files can fairly easily be distinguished from one another if a person familiar with computers is employed to assist in the task. *See, e.g., id.* at § 4.6(d) at 575, n. 104, 104.1.

Instead, warrants in cases where entire computer systems are seized should be required to be at least as

scrupulous as the warrants deemed acceptable to search entire sets of business records. *See United States v. Falon*, 959 F.2d 1143 (1st Cir. 1992) (holding that entire categories of records such as checkbooks, calendars and diaries, and word processors listed as searchable in the warrant rendered the warrant insufficiently particular because it failed to limit the categories to the subject directly linked to the alleged crime); *United States v. Kow*, 58 F.3d 423 (9th Cir. 1995) (search warrant unconstitutionally overbroad where it sought all business and financial records and computer and hardware but failed to limit the items in each category to be seized); *Vonder Ahe v. Howland*, 508 F.2d 364 (9th Cir. 1975) (holding that all business files may not be searched and seized when probable cause only goes to certain types of documents); *In re Grand Jury Proceedings*, 716 F.2d 493, 497-498 (8th Cir. 1983) (where search warrant allowed seizure of all records pertaining to bail bonding business without limitation as to date, transaction or particular files or categories of documents, search became a general search and was unconstitutional); LaFave, *supra*, § 4.6(a) at 552 (citing *Vonder Ahe*, as an "excellent illustration" of the defect in the description of items to be seized when the description is broader than the probable cause upon which it is based).

II. THE FIRST AMENDMENT IMPLICATIONS OF WHOLESALE COMPUTER SEARCHES SUCH AS THIS ONE REQUIRE THE MOST SCRUPULOUS EXACTITUDE.

This Court has long recognized that the "First Amendment imposes special constraints on searches for and seizure of presumptively protected material . . . and requires that the Fourth Amendment be applied with

'scrupulous exactitude' in such circumstances." *Maryland v. Macon*, 472 U.S. 463, 468 (1985). Accordingly, blanket seizures of entire categories of items are prohibited. *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 325 (1979); *Roaden v. Kentucky*, 413 U.S. 496, 506 (1973), *Stanford v. Texas*, 379 U.S. 476, 485 (1965). Because the court below ignored the First Amendment implications of seizing entire computer systems and their contents, it failed to apply the scrupulous exactitude this Court has consistently demanded.

In *Stanford*, this Court prohibited the wholesale seizure of all of the defendant's books and papers based on the First Amendment and the privacy implications of seizing entire literary collections. *Id.* at 485. The reasoning in *Stanford* and the "scrupulous exactitude" test it established are equally applicable here, because there is *no* relevant distinction between the contents of today's computers and the "hardcopy" versions of books, records, memoranda, and personal records that were searched in *Stanford*. If warrants such as the instant one are not held to the "scrupulous exactitude" standard, the privacy and First Amendment principles that proscribe general rummaging through a person's belongings become meaningless, and allow searches in cases like this to affect the rights not only of the persons identified in the warrant, but also the rights of potentially thousands of users of computer systems.

As both the Appendix and the discussion above demonstrate, many different types of documents, including a vast number of personal documents clearly protected by the First Amendment, were seized during this search. Petitioner taught sociology at the University of Southern Maine and stored his academic teaching materials on the

computer systems seized. App. 48-50. Petitioner also stored personal documents, letters and financial records on the computer systems seized. Petitioner's computer files also included literary and language "books" on computer disk. App. 19 *et seq.* All of these forms of expression have been deemed to be protected by the First Amendment. *See Ortega v. O'Connor*, 146 F.3d 1149, 1161 (9th Cir. 1998) (citing *Stanford v. Texas* and *Nixon v. Administrator of General Servs.*, 433 U.S. 425, 529-31 (1977) for the proposition that books and personal papers lie "at the core of First and Fourth Amendment interests").

In deciding that the scrupulous exactitude standard did not apply, the court below relied on an exception carved out in a footnote in *Stanford*:

> The word "books" in the context of a phrase like "books and records" has, of course, a quite different meaning. A "book" which is no more than a ledger of an unlawful enterprise thus might stand on a quite different constitutional footing from the books involved in the present case. *See Marron v. United States*, 275 U.S. 192, 198-199. . . . And in some situations books even of the kind seized here might, for purposes of the Fourth Amendment, be constitutionally indistinguishable from other goods – e.g., if the books were stolen property.

Id. at 485, n. 16. This footnote has been used to justify a less particular warrant standard where literary material, including material in electronic form, has been seized that may otherwise have had First Amendment protection. *See, e.g., United States v. Stelten*, 867 F.2d 446, 450-51 (8th Cir. 1989); *United States v. Layne*, 43 F.3d 127, 132-33

(5th Cir. 1995); *United States v. Kufrovich*, 997 F. Supp. 246, 263 (D. Conn. 1997).

Although "books and records" and stolen goods may justify a lower standard of particularity, the *Stanford* footnote does not support the wholesale seizure of entire computer systems, which are presumptively protected by the First Amendment. As the Court held in *Stanford*, "the constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain." *Id.* at 485; *see also Walter v. United States*, 447 U.S. 649, 654-55 (1980) (stating that "when the contents of a package are books or other materials arguably protected by the First Amendment, and when the basis for the seizure is disapproval of the message contained therein, it is especially important that this [the warrant requirement] be scrupulously observed.") Here, the contents of computer systems are ideas, words, and images and the basis for their seizure is the ideas or images they contain, precisely what the *Stanford* court condemned.[3]

If the reasoning of the court below is applied to the facts of the *Stanford* decision, the fallacy of its decision is clear. When the police seized petitioner's computer files, data and equipment, they were searching for evidence

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[3] That is particularly true where, as here, the warrant's authorization of the seizure of *any* and *all computer images* allowed the police to engage in "general, exploratory rummaging," *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971), through the computer systems and to find and seize evidence of *other* crimes including *other*, unspecified minors.

that petitioner possessed sexually explicit computer images of three specified minors in violation of 17 M.R.S.A. § 2924 and for evidence of violations of 17 M.R.S.A. § 2922, which prohibits the sexual exploitation of minors. Accordingly, the police had two purposes for seizing the items: 1) to determine if the contents supported a charge of possession of sexually explicit materials under 17 M.R.S.A. § 2924; and 2) to determine if the contents could be used as evidence of 17 M.R.S.A. § 2922, the sexual exploitation charge.[4] To avoid the obvious *Stanford* problem posed by seizure of material for their content (the images), the court below reasoned that the evidence was seized only in connection with the sexual exploitation charge and not for its content. App. at 11-12.

That exact argument was unequivocally rejected in *Stanford*. There, the defendant's home was searched for "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, or any written instruments showing that a person or organization is violating or has violated any provision of [the Texas Suppression Act and the Texas Communist Control Law]". *Stanford*, 379 U.S. at 477. In Texas, any member of the Communist Party or any "communist front" organization was required to register with the Texas Department of Public Safety. Further, the operations of the Communist Party in Texas were illegal. Accordingly, the evidence seized in Stanford's home was

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[4] Although Petitioner was *later* charged with Sexual Abuse of a Minor, 17-A M.R.S.A. § 254, the initial crimes that were being investigated should be the focus in determining the *purpose* of the seizure since the purpose of the seizure is the critical factor under *Stanford* for whether the "scrupulous exactitude" standard should apply.

potential evidence that he was engaged in more than one illegal activity, i.e., he had some relationship to the Communist Party *and* he had failed to register with the Texas Department of Public Safety. Under the lower court's reasoning, the books, records, and pamphlets in Stanford's house could lawfully be seized because they were not seized solely for the "ideas they contained" (i.e., solely to prove his views on communism) but also as evidence of other illegal activity – failing to register with the Department of Public Safety as a communist.

The Court should reject that argument as forcefully now as it did in *Stanford*.

CONCLUSION

For the foregoing reasons petitioner respectfully requests that the Court grant the petition for a writ of certiorari to review the decision of the Maine Supreme Judicial Court.

Dated: October 28, 1999

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APPENDIX

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 1999 ME 124

(Filed 1999 Jul 30 P 4:30)

Docket: Cum-98-503
Argued: June 8, 1999
Decided: July 30, 1999

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY, and ALEXANDER, JJ.

STATE OF MAINE

v.

PETER LEHMAN

[MANDATE
A true copy, attested & Certified:

/s/ James Chute
Clerk of the Law Court]

DANA, J.

[¶1] Peter Lehman appeals from a judgment entered in the Superior Court (Cumberland County, Cole, J.) on his conditional guilty plea to fifty-one counts of sexual exploitation of a minor, 17 M.R.S.A. § 2922 (1983 & Supp. 1998), and one count of sexual abuse of a minor, 17-A M.R.S.A. § 254(1) (Supp. 1998). Lehman argues that the Superior Court erred when it denied his motion to suppress because the search warrant was unconstitutionally broad in permitting a search of "all computer equipment and computer-related equipment." We disagree and affirm the judgment.

I.

[¶2] In September 1997, a detective with the Portland Police Department submitted an affidavit and request for a search warrant to the District Court. The police sought to search Lehman, his house in Gorham, his van, his office at the University at Southern Maine, and the University of Southern Maine computer network system for evidence of the sexual exploitation of a minor, 17 M.R.S.A. § 2922 (1983 & Supp. 1998),[1] and the possession of sexually explicit materials, 17 M.R.S.A. § 2924 (Supp. 1998).[2] The detective stated in an affidavit that probable

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[1] Title 17 M.R.S.A. § 2922 provides in relevant part:

Sexual exploitation of a minor

1. Offense. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, he intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not his spouse, who is in fact a minor, to engage in sexually explicit conduct; . . .

. . . .

A minor is a person under 18 years of age. *See* 17 M.R.S.A. § 2921(3) (Supp. 1998).

[2] Title 17 M.R.S.A. § 2924 provides in relevant part:

Possession of sexually explicit materials

1. Definitions. As used in this section, the term "sexually explicit conduct" means any of the following acts:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C;

cause existed for the search because of statements by three girls, ages thirteen, sixteen, and eighteen. The girls

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B. Bestiality;

C. Masturbation;

D. Sadomasochistic abuse for the purpose of sexual stimulation;

E. Lewd exhibition of the unclothed genitals, anus or pubic area of a person. An exhibition is considered lewd if the depiction is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or

F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.

2. Offense. A person is guilty of possession of sexually explicit material if that person intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

A. The other person has not in fact attained the age of 14 years; or

B. The person knows or has reason to know that the other person has not attained the age of 14 years.

. . . .

4. Age of person depicted. The age of the person depicted may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age of the person depicted.

. . . .

stated that Lehman had photographed them with both a regular camera and a digital camera, first with their clothes on and then asking them to slowly take off their clothes. The girls stated that they posed naked and exposed their genitalia. The girls further explained that Lehman photographed them in his backyard and in the woods behind his house, and that he downloaded certain pictures from the digital camera to his computer. One girl stated that Lehman told her that he intended to create a portfolio of these pictures.

[¶3] The District Court issued the search warrant. The property or articles to be searched for included: photographs, photo packages, photograph receipts, slides, negatives, computer files, or digital images of the three girls; writings that include the names of the three girls, or five other named girls; "[p]hotographic film which appears to be exposed but unprocessed;" digital cameras, cameras, and camera equipment; and "[a]ll computer equipment and computer related equipment, including, but not limited to laptops, monitors, key boards, printers, mice, modems, hard drives, CD roms, photo scanners, computer disks, tapes, programs to run computers, and access data, manuals on operations of systems and programs, which Peter Lehman would have been able to access, including, but not limited to, copies of the contents thereof."

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6. **Contraband.** Any material that depicts a person who has not attained the age of 14 years engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

[¶4] The police executed the warrant. The evidence that supported the State's prosecution for sexual exploitation of a minor was seized from a detached hard drive in the basement of Lehman's house. The police also recovered other computer-related equipment, including hardware, commercial compact disks, manuals for computer programs, and over four hundred computer disks.

[¶5] In December 1997, a grand jury returned an indictment charging Lehman with fifty-four counts of Class B sexual exploitation, 17 M.R.S.A. § 2922, and one count of Class C sexual abuse, 17-A M.R.S.A. § 254(1) (Supp. 1998).[3] In January 1998, Lehman filed a motion to

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[3] Title 17-A M.R.S.A. § 254 provides in relevant part:

Sexual abuse of minors

1. A person is guilty of sexual abuse of a minor if:

A. Having attained the age of 19 years, the person engages in a sexual act with another person, not the actor's spouse, who has attained the age of 14 years but has not attained the age of 16 years, provided that the actor is at least 5 years older than the other person; . . .

2. It is a defense to a prosecution under subsection 1, paragraph A, that the actor reasonably believed the other person to have attained his 16th birthday.

3. Violation of subsection 1, paragraph A is a Class D crime; . . . except that the sentencing class for a violation of subsection 1 is one class higher if the State pleads and proves:

A. The actor was more than 10 years older than the other person; or

B. The actor knew the person was related to the actor within the 2nd degree of consanguinity.

suppress evidence pursuant to M.R.Crim. P. 41A(a)[4] arguing, inter alia, that the warrant was overbroad. After a hearing, the Superior Court denied the motion to suppress. In April 1998, Lehman entered a conditional guilty plea pursuant to M.R.Crim. P. 11(a)(2)[5] to fifty-one counts

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[4] Rule 41A of the Maine Rules of Criminal Procedure provides in relevant part:

> **MOTION TO SUPPRESS EVIDENCE**
>
> **(a) Grounds of Motion.** A defendant may move to suppress as evidence any of the following, on the ground that it was illegally obtained:
>
> (1) physical objects;
>
> (2) statements of the defendant;
>
> (3) test results;
>
> (4) out-of-court or in-court eyewitness identifications of the defendant.
>
> . . . .

[5] Rule 11 of the Maine Rules of Criminal Procedure provides in relevant part:

> **PLEAS; ACCEPTANCE OF A PLEA TO A CHARGE OF A CLASS C OR HIGHER CRIME**
>
> **(a) Pleas**
>
> . . . .
>
> (2) *Conditional Guilty Plea.* With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional guilty plea. A conditional guilty plea shall be in writing. It shall specifically state any pretrial motion and the ruling thereon to be preserved for appellate review. If the court approves and the attorney for the state consents to entry of the conditional guilty plea, they shall file a written certification that the record is adequate for appellate review and that the case is not appropriate for application of the harmless error doctrine.

of sexual exploitation of a minor, 17 M.R.S.A. § 2922, and one count of sexual abuse of a minor, 17-A M.R.S.A. § 254(1). Lehman thereafter appealed.

II.

[¶6] Lehman argues that the warrant was overbroad in violation of the Fourth Amendment because it permitted the police to search all computer equipment, hardware, and software without limitation. We disagree.

[¶7] "A decision as to the constitutional adequacy of a search warrant is a matter of law." *State v. Pelletier*, 673 A.2d 1327, 1329 (Me. 1996) (footnote omitted). The issue of whether the search warrant lacks the required specificity as to the place and items to be searched is an issue of constitutional adequacy that we review de novo. *See id.*

[¶8] The Fourth Amendment to the United States Constitution and article I, section 5, of the Maine Constitution protect against unreasonable searches and seizures. U.S. CONST. amend. IV.; ME. CONST. art. 1, § 5.[6] The

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> Appellate review of any specified ruling shall not be barred by the entry of the plea.
>
> If the defendant prevails on appeal, the defendant shall be allowed to withdraw the plea.
>
> . . . .

[6] The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

Fourth Amendment requires that a search warrant "particularly describ[e]" the place to be searched and the persons or things to be seized, and article I, section 5, of the Maine Constitution requires that a warrant make a "special designation" of the place to be searched and the persons or things to be seized. U.S. CONST. amend. IV.; ME. CONST. art. 1, § 5. "A warrant must describe the property to be seized with such particularity that an executing officer will be able to identify it 'with certainty.' " *Pelletier*, 673 A.2d at 1329 (quoting *State v. Sweatt*, 427 A.2d 940, 949 (Me. 1981)). "Such particularity discourages general searches and prevents the unauthorized seizure of property under the mistaken belief that it falls within the authorization of the warrant." *Sweatt*, 427 A.2d at 949. "The warrant can leave nothing to the discretion of the executing officer as to what is to be taken." *Pelletier*, 673 A.2d at 1329.

[¶9] When a warrant is issued to seize all computer software and hardware to recover computer images, courts have refused to conclude that the warrant is

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Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, section 5, of the Maine Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause – supported by oath or affirmation.

unconstitutional because of a failure to particularly describe the items to be seized. *See United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999), *cert. denied*, 67 U.S.L.W. 3757 (U.S. June 14, 1999) (No. 98-9320) (upholding warrant issued for "[a]ny and all computer software and hardware, . . . computer disks, disk drives . . . " in the house of a woman suspected of sending and receiving child pornography over the Internet); *United States v. Lacy*, 119 F.3d 742, 746 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 1571 (U.S. Apr. 27, 1998) (No. 97-8454) (upholding warrant issued for search of computer equipment and concluding that "this type of generic classification is acceptable 'when a more precise description is not possible,' and in this case no more specific description of the computer equipment sought was possible."); *Davis v. Gracey*, 111 F.3d 1472, 1479 (10th Cir. 1997) (upholding warrant issued for "equipment . . . pertaining to the distribution or display of pornographic material in violation of state obscenity laws. . . . " that resulted in seizure of computers, monitors, keyboards, modems, CD-ROM drives and changers). "[A] warrant that describes the items to be seized in broad or generic terms may be valid when the description is as specific as the circumstances and the nature of the activity under investigation permit." *Davis*, 111 F.3d at 1478 (quoting *United States v. Leary*, 846 F.2d 592, 600 (10th Cir. 1988)) (internal quotations omitted).

[¶10] The warrant was not unconstitutionally overbroad when it authorized the seizure of all computer-related equipment in Lehman's house. *See Upham*, 168 F.3d at 535; *Lacy*, 119 F.3d at 746; *Davis*, 111 F.3d at 1479. The police knew only that the images of the girls who

Lehman allegedly sexually exploited were taken by a digital camera and downloaded on a computer. The description of the computer equipment to be seized was "as specific as the circumstances and the nature of the activity under investigation permit[ted]." *Davis*, 111 F.3d at 1478. Consequently, the warrant was not overbroad. *See Upham*, 168 F.3d at 535; *Lacy*, 119 F.3d at 746; *Davis*, 111 F.3d at 1479.

[¶11] Lehman also argues that the warrant should have limited the search to the computer on the second floor of his Gorham home because such a computer was specifically identified by one of the girls who made a statement to the police. We disagree. A search of Lehman's entire house was appropriate given the mobility of computer equipment and the girls' statements that the alleged acts of sexual exploitation occurred throughout the premises. Moreover, although two girls stated that Lehman used a computer, only one specifically identified that computer as the computer on the second floor of the Gorham house. Consequently, the warrant does not fail for overbreadth because it authorized a search of Lehman's entire house.

III.

[¶12] Lehman argues that because the warrant authorized the seizure of items presumptively protected by the First Amendment, the warrant must describe the items to be seized with "scrupulous exactitude." We disagree.

[¶13] "[T]he constitutional requirement that warrants must particularly describe the 'things to be seized'

is to be accorded the most scrupulous exactitude when the 'things' are books, and the basis for their seizure is the ideas which they contain." *Stanford v. Texas*, 379 U.S. 476, 485 (1965); *see also United States v. Guarino*, 729 F.2d 864, 867 (1st Cir. 1984); *see generally* 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 4.6(e) (3d ed. 1996) (discussing "scrupulous exactitude" standard). First Amendment rights and the "scrupulous exactitude" standard are not implicated, however, when the materials to be seized are sought as evidence of a crime and not for "the ideas which they contain." *See United States v. Layne*, 43 F.3d 127, 133 (5th Cir. 1995) (rejecting "scrupulous exactitude" standard for seizure of "pornographic" videotapes and magazines when items seized to corroborate victim's testimony regarding a sexual assault and not because of ideas contained); *United States v. Stelten*, 867 F.2d 446, 450 (8th Cir. 1989) (rejecting "scrupulous exactitude" standard for seizure of written business records when items seized as evidence that defendant conspired to defraud government); *United States v. Kufrovich*, 997 F. Supp. 246, 263 (D. Conn. 1997) (rejecting "scrupulous exactitude" standard for warrant to seize computers and correspondences when items seized as evidence that defendant used interstate commerce to persuade minor to engage in unlawful sexual act).

[¶14] We reject Lehman's contention that the warrant was required to describe the items to be seized with "scrupulous exactitude." The warrant authorized the seizure of photographs and digital images because such items were evidence that Lehman sexually exploited minors – the police did not seize these items because of the content or ideas contained therein. *See Layne*, 43 F.3d

at 133; *Stelten*, 867 F.2d at 450; *Kufrovich*, 997 F. Supp. at 263. Consequently, the First Amendment and the "scrupulous exactitude" standard is not implicated. Because this warrant particularly described the items to be seized pursuant to the United States Constitution and the Maine Constitution, we affirm the judgment.

The entry is:

Judgment affirmed.

Attorneys for the State:

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CRIMINAL DOCKET
NO. CR-97-1874

STATE OF MAINE,
Plaintiff
v.
PETER LEHMAN,
Defendant.

* * *

CONCLUSION

For the reasons set forth above, Dr. Lehman respectfully requests that this Court suppress the evidence obtained from these unlawful searches and seizures and order that the property seized pursuant thereto be immediately returned to Movant.

Dated: January 19, 1998
Portland, Maine

/s/ Bruce M. Merrill
Bruce M. Merrill
Attorney for Defendant
Bar No.: 3910

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[4-12-98 motion is denied as
stated on the record on 3-5-98
/s/ Roland A. Cole]

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Criminal Action
Docket No. CR-97-1874
Law No. CUM-98-503

THE STATE OF MAINE)
)
v.)
PETER LEHMAN,)
Defendant.)

SUPPRESSION HEARING

BEFORE:

THE HONORABLE ROLAND A. COLE
JUSTICE OF THE SUPERIOR COURT

Cumberland County Courthouse
148 Federal Street
Portland, Maine

March 5, 1998
1:12 P.M.

APPEARANCES:

FOR THE STATE: MEGAN L. ELAM, ADA, ESQ.
FOR THE DEFENDANT: BRUCE M. MERRILL, ESQ.

JANETTE L. COOK
OFFICIAL COURT REPORTER

* * *

[p. 110] THE COURT: Thank you. All right, in reviewing the affidavits of Koral, her statement, in tying it in in [sic] time as to whether this is timely or not, she indicates that on 8/13 she had contact with him, that she asked to have her sister go along, that he took a picture of her and a number of other things there, arranged to see

her the next morning at 8:00 A.M., she didn't show, she had seen him a few times since then, the last time she saw him was on 9/4/97 at the Preble Street Resource Center, and she told him to take off and her boyfriend ran after him.

Turning then to Allison's statement, and at the very end of the statement she relates a series of [p. 111] things that had taken place with him and said the last time he took nude pictures of me was the end of July, 1997. Now, that's certainly that certainly ties in and is specific as to within a couple of months of the time of the search or less, in the case of Koral. So I don't see that the matter is stale.

And I do agree that the items seized in this case here, materials that were stored on computer, photographs, or photographs taken in the traditional picture form are items that are likely to be kept for a long period of time. They're certainly not like deer meat which may be consumed or marijuana or cocaine that can be consumed or moved. And in the case of – in many of the cases which we talked about updating the confidential informants, whether or not there's a drug dealer that is dealing, whether or not there's any recent information that in fact there were drugs there, and – or evidence of recent drug.

In this case here, I believe that the nature of the items seized and requested to be seized are such that there's a – a very good likelihood, and I think that's essentially common knowledge, that those items are the type that are apt to be retained and stored for a period of time. In any event, there's indication that he was involved in the

[p. 112] activity within two months of the requested search.

Dealing with the question of the overbreadth of the search, there is no question there were some items seized which now clearly have no evidentiary value to the state and there's no reason for the state to keep and should be returned to Professor Lehman. And – but there are other items that are seized that are clearly relevant that were pursuant to the warrant, that are contraband, and will be probative evidence in the event that there's a trial in this matter.

As to whether or not the search warrant itself as issued by Judge Foster, whether within the four corners of that warrant there's probable cause, clearly there is. There is much more material contained herein that had been supplied to the judge by the police than usually appears in most warrants. There's a lot of material there that indicates that there was a violation of law, that there was specific means used to violate the law, that is cameras of a digital nature as well as standard cameras. And the request for the search warrant was to seize items – property to be seized in paragraphs one, two, three, four, five six, seven and eight, one through seven are the photographic and computer material, eight is [p. 113] the writings with the names of the alleged victims in it, and then nine again is computer related records, including access codes and passwords. The methodology of the search and seizure was specific, indicating that they recognized they were going to be in a sophisticated electronic search and might very well need expertise in following through on that.

I find nothing in the warrant itself to indicate that there was any abuse of discretion by the judge in issuing the same. And I find that the police acted in good faith in providing the information to the judge in this case. And in any event, if – for the purposes of the record here, in any event, if it is determined that there may be some technical error with the methodology here that was done or with the affidavit or the warrant, I believe that the police acted in good faith and were objectively reasonable, okay, in that – to take care of that issue.

Having said all that, I do believe there are items that should be returned. And what I'm going to ask is counsel to go ahead and prepare a list of items that they believe should be returned that are not contraband, to go over that, if they can't reach an agreement, then I will item by item [p. 114] make a decision henceforth. It won't be this afternoon, okay, but, you know, I'll give you some time to do that, I will do that. First of all, I don't believe the state has any desire long range to keep that material, somebody has to store it, and obviously much of the computer materials if they're not of an evidentiary nature should be returned to Dr. Lehman.

Have we taken care of that issue completely?

MS. ELAM: Yes, Your Honor.

MR. MERRILL: Yes, Your Honor.

* * *

STATE OF MAINE
Cumberland, ss

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-98-503

State of Maine

ORDER

vs.

Peter Lehman

Upon motion of appellant to supplement the reocrd [sic] on appeal,

It is hereby ORDERED that the motion be GRANTED. Defendant's "partial inventory of computer hardware and software" shall be included in the record on appeal.

Dated: February 26, 1999

For the Court,

/s/ Daniel E. Watham
Chief Justice

Partial Inventory of Computer Hardware and Software

Note that most items, except for a few "computer-related hardware" entries, are from an inventory compiled by Bruce Merrill, February 20, 1998. References are to the item number listings on the police evidence collection logs for the searches at 120 Bedford St., Portland [Bedford] and 452 South St., Gorham [Gorham].

Computer-related Hardware

1. 3 working computer central processing units with processor, random access memory, hard drive, video card, sound card, floppy drive, and CD-ROM drive. (Bedford item 4, Gorham items 26, 39)
2. partially disassembled computer central processing unit with processor, random access memory, hard drive, video card, and floppy drive. (Gorham item 34)
3. internal modem (Gorham item 34)
4. 4 color computer monitors with power cords and cables (Bedford item 2, Gorham items 27, 33, 46)
5. 4 computer keyboards (Bedford item 1, Gorham items 29, 35, 41)
6. 3 computer mice and 1 trackball mouse (Bedford item 3, Gorham item 30, 35, 41)
7. inkjet printer with power cord and cable (Bedford item 5)
8. laser printer with power cord and cable (Gorham item 60)

9. color inkjet printer with power cord and cable (Gorham item 28)

10. 6 speakers with power cords and plug-in cables (Bedford item 6, Gorham item 30, not listed with 39)

11. 3 power strip electrical extension cords (Bedford not listed with 4, Gorham items 30, 41)

12. 2 telephone wires (Gorham item 41)

13. Road Runner modem (Time-Warner Cable) with power cord and cables (Gorham item 42)

14. APC backup electrical power supply (Gorham item 40)

15. Omni scanner, not installed (Gorham item 43)

16. Gravis joystick, not installed (Gorham item 43)

17. Video card, not installed (Gorham item 43)

18. Miscellaneous other cables and cards, not installed (Gorham item 43)

19. CD-ROM drive not installed (Bedford item 9)

20. Screwdriver (Bedford item 9)

21. Pair of pliers (Bedford item 9)

22. Two boxes of miscellaneous computer equipment (not completely inventoried) including a powertronic switching power supply, various cables and brackets, a caviar 2250 western digital AT compatible

intelligent drive, and a box containing an archive corporation drive (for a tape drive), etc. (Bedford item 9, box 2, Gorham item 23)

Commercial compact disks

1. 9FX Reality 332 video card installation disk (Gorham item 47)
2. Antonio Vivaldi Le Quattro stagioni – The English Concert (Bedford item 9)
3. ASYMETRIX Web 3d (Gorham item 47)
4. Cathy Mettea, Love Travels (Gorham item 52)
5. Chinese Recipes (Gorham item 52)
6. Compuserve 3.0.1 (Gorham item 52)
7. Corel Quattro Pro 7 (Gorham item 52)
8. Culinary Excursion through China (Gorham item 52)
9. Delorme Introductory Guide, Triple AAA Map and Go (Gorham item 52)
10. Delorme Map and Go 2.0 (Gorham item 52)
11. English Screamer CD [game], by Graffiti (Gorham item 47)
12. Explore It, the American Survey (Gorham item 52)
13. Hercules [video card software] October 10, 1996 (Gorham item 47)

14. Hercules Entertainment Center, drivers, demos, technical resource (Gorham item 47)

15. Hercules Touch 95 (Gorham item 47)

16. Highjaack Graphics, Suite Version 3.0 (Gorham item 52)

17. J.S. Bach Motets, Motten Choir of Kings College, Cambridge (Bedford item 9)

18. James Galway, Christmas Carol (Gorham item 52)

19. Madrigal Masterpieces The Renaissance in France, Italy and England (Bedford items 9, 12)

20. Microsoft Encarta 95 Multimedia Encyclopedia, 1995 Edition (Gorham item 24)

21. Microsoft Flight Simulator for Windows 95 (Gorham item 52)

22. Microsoft MS-Dos 6.21 plus enhanced tools, Disc 2 (Bedford item 7)

23. Microsoft MS-Dos 6.21 plus enhanced tools, Disc 3 (Bedford item 7)

24. Microsoft Office 97 (Gorham item 52)

25. Microsoft Office and Bookshelf Disc 1, installation disc (Bedford item 9)

26. Microsoft Office and Bookshelf Disc 2, Reference Disc (Bedford item 9)

27. Microsoft Windows 95 Release 1996 (Gorham item 52)

28. Microsoft Windows 95 upgrade (still in original packaging) (Bedford item 8)

29. Mozart Horn Concertos, Barry Tuckwell English Chamber Orchestra (Bedford item 9)

30. Nuts and Bolts 09-A 73739 (Gorham item 52)

31. PC-Cybersoc, brand name, Verbatim (Bedford items 9, 13)

32. Robotics 56 K, Connections Vol. 3 (Gorham item 52)

33. Soundblaster CD (Gorham item 52)

34. Think and Talk French, Berlitz (Gorham item 52)

35. Windows 95 Havoc (Gorham item 47)

36. Windows Draw, Graphics and Print Studio Application (Gorham item 52)

"Manuals"

1. 16 bit audio card, Getting Started (Gorham item 31)

2. 4 in 1 Winfax lite.dos fax lite (Gorham item 31)

3. 4XTDE CD-ROM Manuals (Gorham item 31)

4. 9FX Motion 531 Users Guide (Bedford item 8)

5. 9FX Reality 332 (Gorham item 52)

6. 9FX Reality 332, Graphics Accelerator Reference Guide (Gorham item 52)

7. ABC Back-ups (Gorham item 53)

8. American Heritage Dictionary (Gorham item 53)
9. Archive Excel Installation Manual (Gorham item 53)
10. Calendar Creator Plus (Gorham item 53)
11. CD Rom Drive User's Guide (Gorham item 38)
12. Creative, 16 bit audio card plug and play (Bedford item 7)
13. Delrina 4 in 1 User's Guide for the Sony Quad-Speed CD-Rom Drive Revision 1.10, October 13, 1995 (Gorham item 31)
14. DOS Windows 3.X & Windows 95 DOS Mode Plug n Play Installation Tips (Gorham item 38)
15. DTK computer manual (Bedford item 7)
16. Explore It, the American Survey (Gorham item 52)
17. Express Setup US Robotics, Soundblaster 16 (Gorham item 38)
18. Feat -03 486 PC system user's manual (Bedford item 7)
19. Getting Started – Plug and Play (Gorham item 38)
20. IBM 3812 Page Printer CAPS Reference Manual, November 1987, copyright 1987 by the University of Maine System (Bedford item 9)
21. Installing Microcase 3.0 on a network, instructions sheet (Bedford item 7)

22. Installing Microcase 3.1 on a Network, instruction sheets (Bedford item 7)
23. Instruction Manual 16 Bit Audio Card User's Guide (Gorham item 31)
24. Introducing Microsoft Windows 95 (Bedford item 9)
25. Laser Printer Documentation (14 page printout in folder) (Bedford item 9)
26. Microsoft Draw (Gorham item 53)
27. Microsoft Education Editor (Gorham item 53)
28. Microsoft Excel Function Reference (Gorham item 53)
29. Microsoft Excel User's Guide 1 (Gorham item 53)
30. Microsoft Graft (Gorham item 53)
31. Microsoft Home CD sampler (Gorham item 31)
32. Microsoft Mouse User's Guide (Gorham item 31)
33. Microsoft TruType, Font Pac (Gorham item 53)
34. Microsoft Word for Windows Getting Started (Gorham item 53)
35. Microsoft Word User's Guide (Gorham item 53)
36. Microsoft Word, Quickresults (Gorham item 53)
37. Microsoft Works, Getting Started (Gorham item 53)

38. My Advanced Label Designer. (Bedford item 9)

39. Owner's Manual Computer Case GT-210 (Gorham item 38)

40. PAM-00541 High Performance Pentium PCI Main Board User's Manual (Gorham item 31)

41. PC-Trac Owners Guide (Gorham item 24)

42. Power Pak Version II, IBM Dos Version (Gorham item 24)

43. Precision Pointer Software Guide (Gorham item 24)

44. Quattro Pro 7 (Gorham item 53)

45. Quattro Pro for Windows, Data Base Desk Top Guide. (Gorham item 53)

46. Quattro Pro for Windows, Getting Started (Gorham item 53)

47. Quattro Pro for Windows, Quick Reference Guide (Gorham item 53)

48. Roadrunner Installation manual (Gorham item 53)

49. Sony CDU – 77E (Gorham item 31)

50. Soundblaster 16 (Frontier) Accessories

51. Soundblaster 16 (Frontier) Installation

52. Sportster 56 K Fax Modem, Internal Installation Guide (Gorham item 58)

53. Sportster 56 K Fax Modem, User's Guide Reference (Gorham item 58)

54. Super (black dot) Pentium P5STE AMI BIOS Reference Manual, Revision 3.0. (Gorham item 38)

55. Super (red dot) Pentium System P5STE User's Manual (Gorham item 38)

56. Super (with red dot) pentium system P5ste, P5std, Users Manual (Bedford item 7)

57. Super O Pentium P5ste, Pentium P5Stdm (Bedford item 8)

58. Symcity 2000 (Gorham item 53)

59. The 7th Guest CD Rom Quicken User's Guide Version 2.0 for Windows (Gorham item 53)

60. U.S. Robotics, Quick Installation, Troubleshooting Sportster Modems (Gorham item 52)

61. Ultra 15 User's Manual, Prints and Graphic Systems (Gorham item 38)

62. User's Guide 2, Microsoft Excel (Gorham item 53)

63. User's Guide, Microsoft Works, from Gateway 2000 (Gorham item 53)

64. User's Manual for PCI-47, PCI-Bus VGA Accelerator (Gorham item 31)

65. VT9440 Driver [video]

66. Waterloo Script and the IBM 3820 Printer (Bedford item 9)

67. Windows 95 Users Installation and Starting Guide Instructions (Gorham item 24)

68. Windows 95, Windows 3.1, Power Macintosh and Macintosh, Troubleshooting Guide (Gorham item 24)

69. Windows Draw, Graphics and Print Studio (Gorham item 53)

70. Winfax Pro User's Guide (Gorham item 53)

71. Winfax Pro, Version 3.0 (Gorham item 53)

Other papers logged with "manuals"

1. Soundblaster Registration card (Gorham item 38)

2. Warranty Registration card (Gorham item 38)

3. Registration card (Gorham item 38)

4. Various bills and receipts for computer equipment (Gorham item 38)

5. Print Cache, current settings, printout (Gorham item 51)

Disks

1. 11 3.5 in. floppies unmarked (Gorham item 47)

2. 50 3.5 in. floppies still in sealed factory packaging (Gorham item 47)

3. 4DOS 4 Files Mostly Zip (Gorham item 49)

4. 4DOS Version 5.5 (Gorham item 49)

5. 4DOS, Version 4.0 (crossed out) (Gorham item 49)

6. ADK Script (Bedford item 9)
7. Adobe Acrobat Exchange 2.1, disc, 3 (Bedford item 10)
8. Analysis system data files (Bedford item 10)
9. Archive DOCS & Data (Gorham item 47)
10. Archive question bank for STARK for testing doc (Bedford item 10)
11. Archive Smarts, WSDOCS ETC21\89 Zip (Gorham item 50)
12. Archive Xword S Bridge, old mouse DIR. 7\91 (Bedford item 10)
13. Ashton Tate, Control Room, Program discs 1&2 (Gorham item 50)
14. Back up, Word Docs, Smart WS Zip 12-6-89 (Gorham item 50)
15. Backup zips 12\16\94 (Bedford item 10)
16. Basic backup 202 5\1\91 (Bedford item 10)
17. Bear 4, DOS Boot with tools (Gorham item 50)
18. Berkley Systems, After Dark for Windows (Gorham item 49)
19. Berkley Systems, After Dark, The Ultimate Screen Saver Collection (Gorham item 50)
20. Borland Quattro Pro (Gorham item 49)
21. Borland Quattro Pro (Gorham item 49)
22. Borland Quattro Pro (Gorham item 49)

23. Borland Quattro Pro (Gorham item 49)

24. Borland Quattro Pro (Gorham item 49)

25. Calendar Creator Plus for Windows, Discs 1 (Gorham item 49)

26. Calendar Creator Plus for windows, Discs 2 (Gorham item 49)

27. Calendar Creator Plus for windows, Discs 3 (Gorham item 49)

28. Calendar Creator Plus for Windows, Discs 4 (Gorham item 49)

29. Canadian National Election study 1988 campaign period survey parts – A & B (Bedford item 10)

30. Canadian National Election study 1988 post election survey parts A & B weight variables (Bedford item 10)

31. Canadian National Election study 1988 self administered questionnaire (Bedford item 10)

32. CD-Rom device driver (Gorham item 7)

33. CD-Rom Microsoft MS-Dos 6.21 plus enhanced tools, Disc 2 (Bedford item 7)

34. CD-Rom Microsoft MS-Dos 6.21 plus enhanced tools, Disc 3, (non-commerical) (Bedford item 7)

35. Central Point Windows, Utilities. (Gorham item 49)

36. Central Point, Anti-Virus, install disc, program disc, program utilities disc (Gorham item 49)

37. Central Point, PC Tools, install, disc 1 (Gorham item 49)

38. Central Point, PC Tools, install, disc 2 (Gorham item 49)

39. Central Point, PC Tools, install, disc 3 (Gorham item 49)

40. Central Point, PC Tools, install, disc 4 (Gorham item 49)

41. Central Point, PC Tools, install, disc 5 (Gorham item 49)

42. Central Point, PC Tools, install, disc 6 (Gorham item 49)

43. Central Point, PC Tools, install, disc 7 (Gorham item 49)

44. Chapter S March 1992, Sept. 92, Dec. 92, (4S93 Guide Summer 1992) (Gorham item 49)

45. Chinon CDS-545 CDM-ROM Drive installation program (Bedford item 10)

46. Chip Soft, Turbotax Personal-1040 Disc A and B (Gorham item 49)

47. Chipsoft, Turbotax Personal 1040, discs A, B, C, D (Gorham item 50)

48. Commercial India, Microcase Data Archives (Gorham item 50)

49. Compuserve, Information Manager for Windows Disc 1 (Gorham item 49)

50. Compuserve, Information Manager for Windows Disc 2 (Gorham item 49)

51. Computer Card, Plug In and INT Book for Space Quest IV, Roger Wilco and the Time Rippers (Gorham item 47)
52. Course stuff, second copy (Bedford item 10)
53. Course zips (Bedford item 10)
54. Course zips F87 (Bedford item 10)
55. Cross-roads report, x-road S1.ser x-roads (Bedford item 10)
56. CT review for DOS for Critical Thinking 5th Edition (Bedford item 12)
57. Custom Configuration Data Entry Tool, kit disc (Gorham item 49)
58. Data sets for social inquiry 8\13\92 (Bedford item 10)
59. Date accelerator for IDE hard disk drives, version 1.1 (Bedford item 10)
60. Delta Graph Professional for Windows, installation discs (set of 3 still in package, unopened) (Gorham item 47)
61. DESQ View 386 Upgrade (Gorham item 49)
62. Disc printer drivers for Word (Bedford item 10)
63. Disc Word companion DESQ view 386 (Bedford item 10)
64. Disk Backup (Note on disc says "good backup of the entire PC, Joe" (Gorham item 37)
65. Disk manager version 6.03C (Bedford item 10)

66. DOC files Zip 7/17/92 (Gorham item 47)

67. Document archive using docback-bat to archive 11\19\90 (Bedford item 10)

68. DOS 5.0 Boot with RAMDISC, Stacker HM-M (Gorham item 50)

69. DOS 5.0, Bear and Recovery Disc, (Gorham item 50)

70. Driver installation diskette disc 2 OS\2 2.1 & Warp (Bedford item 10)

71. Emergency Disc 12\94 (Gorham item 47)

72. ESS Workshop (Gorham item 36)

73. F87, S88, S88, S89, F89 (Bedford item 10)

74. Facility Data Base Disc IPS, East U.S. (Gorham item 47)

75. Flight Assignment: ATP disc 1 (Gorham item 49)

76. Flight Assignment: ATP disc 2 (Gorham item 49)

77. Flight Assignment: ATP disc 3 (Gorham item 49)

78. Flight Controls Driver Version 1 (Gorham item 49)

79. Gateway 2000, ATI Local Bus, Ultra Pro, Version 1.2, discs 1&2 (Gorham item 50)

80. Gateway 2000, Drivers and Utility Disc, Microsoft OEM Mouse (Gorham item 50)

81. Gateway 2000, Microsoft Word for Windows, discs 2-7 (Gorham item 50)

82. General Social Survey 1987, 1988, 1989, disc 4 of 6 (Bedford item 10)

83. General Social Survey 1989 (Bedford item 10)

84. General Social Survey 1990 (Bedford item 10)

85. General Social Survey 1990, 91, 93 Disc 5 of 6, (Gorham item 47)

86. General Social Survey 1993 (Bedford item 10)

87. General Social Survey 1994, Microcase Version 3.X, Disc 6 of 6 (Gorham item 47)

88. General Social Survey 72, 73, 74, 75, 76 disc 1 of 6 (Bedford item 10)

89. General Social Survey 77, 78, 80, 82, disc 2 of 6 (Bedford item 10)

90. General Social Survey 83, 84, 85, 86 disc 3 of 6 (Bedford item 10)

91. Geoclock (Bedford item 10)

92. Gravis Utilities (Gorham item 49)

93. GSS-94 Sociology USM Fall 1996 QPW, (Gorham item 7)

94. Hawk Eye windows installation disc (Bedford item 10)

95. Heath MS DOS, R Version 3.2 (Gorham item 50)

96. High School and Beyond Essential File: Seniors parts A & B (Bedford item 10)

97. High School and Beyond Essential File: Seniors parts C & D (Bedford item 10)

98. High School and Beyond Essential File: Seniors parts E & F (Bedford item 10)

99. Highjaack Graphic Suite, Version 3.0, disc 1 (Gorham item 49)

100. Highjaack Graphic Suite, Version 3.0, disc 2 (Gorham item 49)

101. Highjaack Graphic Suite, Version 3.0, disc 3 (Gorham item 49)

102. Highjaack Graphic Suite, Version 3.0, disc 4 (Gorham item 49)

103. Highjaack Graphic Suite, Version 3.0, disc 5 (Gorham item 49)

104. Highjaack Graphic Suite, Version 3.0, disc 6 (Gorham item 49)

105. Highjaack Graphic Suite, Version 3.0, disc 7 (Gorham item 49)

106. Highjaack Graphic Suite, Version 3.0, disc 8 (Gorham item 49)

107. HP Deskjet Printer Software – installation disc 2 (Gorham item 47)

108. HP Deskjet Printer Software – installation disc 3 (Gorham item 47)

109. HP Deskjet Printer Software Installation Disc 1 (Gorham item 47)

110. HP drivers, (Bedford item 7)

111. India 2 Microcase Data Archive (Bedford item 10)

112. India Showcase, Version 2 (Gorham item 50)

113. INQ WKBK & Guide Zip 7\31\92, (Gorham item 47)

114. INST Guide for I & Q Workbook 9\8\92 (Gorham item 47)

115. Installation System Disc 1 (Gorham item 49)

116. Instrument Pilot Scenery, East U.S. (Gorham item 47)

117. Instrument Pilot scenery, East U.S. (Gorham item 47)

118. Intro book 12\93 and testing doc (Bedford item 10)

119. Intro Class Setup-Zips Format (Gorham item 37)

120. Introducing Sociology, January 94 (Bedford item 10)

121. January 1990-most of 1989 (&88) script files (Bedford item 10)

122. Kaleidoscope, Learning Co. Writer Rabbit (Gorham item 50)

123. Label program, data CL-ISS and Soc-lab (Bedford item 10)

124. Mainframe logs 12\94, 10\95 (Bedford item 10)

125. Mainframe logs subdirectories by file date e.g. 7/89 (Bedford Item ITEM 10)

126. Mansfield Software Group KEDIT 5.0 (Gorham item 49)

127. Mansfield Software Group, KEDIT 5.0, Service Level 1, DOS (Gorham item 50)

128. Master copy of MC for Intro W. Intset 8\93 (Bedford item 10)

129. Master copy of MC inquiry W.InqSet 8\93 (Bedford item 10)

130. MC and Recode files (Bedford item 10)

131. Microcase 4\ (Gorham 24)

132. Microcase 5\ (Bedford 24)

133. Microcase Analysis System network version 3.5, disc 1 of 2 (Bedford item 10)

134. Microcase Analysis System network version 3.5, disc 2 of 2 (Bedford item 10)

135. Microcase analysis system version 3.0 disc 3 of 3 (with X through it) (Bedford item 7)

136. Microcase Analysis System version 3.0 network version disc 2 of 3 (with an X through) (Bedford item 7)

137. Microcase Analysis System version 3.0, disc 2 of 3 (with an X through it) (Bedford item 7)

138. Microcase Analysis System version 3.0, networks version disc 1 of 3 (with and [sic] X through it) (Bedford item 7)

139. Microcase Analysis System version 3.1, disc 2 of 2 (crossed out "Startup Disc" written in its e) (Bedford item 7)

140. Microcase Analysis System version 3.1, network version disc 2 of 2 (Bedford item 7)

141. Microcase Analysis System version 3.1B, network version 202 (with X through it) (Bedford item 7)

142. Microcase Analysis System version 3.1b, networks version disc 1 of 2 (with an X through it) (Bedford item 7)

143. Microcase Analysis System, version 3.0 disc 1 of 3 (Bedford item 10)

144. Microcase Analysis System, version 3.1 disc 102 (with an X through it) (Bedford item 7)

145. Microcase Analysis System, version 3.5 disc 1 of 2 (Bedford item 10)

146. Microcase Analysis System, version 3.5 disc 2 of 2 (Bedford item 10)

147. Microcase and survey 88 (Bedford item 10)

148. Microcase backup MC2 files 12\16\94 (Bedford item 10)

149. Microcase Data Archive disc 1, States 1990 (Bedford item 10)

150. Microcase Data Archive disc 2, Colonial America (Bedford item 10)

151. Microcase Data Archive disc 3, Standard Cross-cultural (Bedford item 10)

152. Microcase Data Archive disc 4, Victorian England (Bedford item 10)

153. Microcase data archive group set 6: US Politics (Bedford item 10)

154. Microcase Data Archive Group, set 1 International data (Bedford item 10)

155. Microcase Data Archive Group, set 2 Historical data (Bedford item 10)

156. Microcase Data Archive Group, Set 3, disc 2 of 3 (Bedford item 10)

157. Microcase Data Archive Group, set 3, disc 3 of 3, States and Counties of the USA (Bedford item 10)

158. Microcase Data Archive, Group Set 1: International Data (Gorham item 47)

159. Microcase Data Archive, Group Set 3: (Disc 1 of 3) States and Counties of the USA (Gorham item 32)

160. Microcase Data Archive, Group Set 4: (Disc 1 of 5) Individual States by Counties (Gorham item 47)

161. Microcase Data Archive, Group Set 4: (Disc 2 of 5) Individual States by Counties (Gorham item 47)

162. Microcase Data Archive, Group Set 4: (Disc 3 of 5) Individual States by Counties (Gorham item 47)

163. Microcase Data Archive, Group Set 4: (Disc 4 of 5) Individual States by Counties (Gorham item 47)

164. Microcase Data Archive, Group Set 4: (Disc 5 of 5) Individual States by Counties (Gorham item 47)

165. Microcase Data Archive, Group Set 5: (Disc 1 of 3) U.S. City Data (Gorham item 47)

166. Microcase Data Archive, Group Set 5: (Disc 2 of 3) U.S. City Data (Gorham item 47)

167. Microcase Data Archive, Group Set 5: (Disc 3 of 3) U.S. City Data (Gorham item 47)

168. Microcase Data Archive, Group Set 7: Cross-Cultural Data (Gorham item 32)

169. Microcase Data Archive, National Survey of Religious Identification (Gorham item 47)

170. Microcase Data Archives Showcase, Instructional Materials, preindustrial society (Bedford item 10)

171. Microcase Electronic Catalog current through January 1, 1995 (with an X through it) (Bedford item 7)

172. Microcase Electronic Catalog, current through January 1, 1996 (Bedford item 10)

173. Microcase General Social Survey, 1972, Version 1.0 (Gorham item 50)

174. Microcase General Social Survey, 1973, Version 1.0 (Gorham item 50)

175. Microcase Remote Entry Module version 3.1B (with an X through it) (Bedford item 7)

176. Microcase version 2.11, Showcase A and Showcase B with an X through it (Bedford item 7)

177. Microcase version 2.11, correlation, factor and regression module (Bedford item 10)

178. Microcase version 2.11, correlation, factor and regression module (Bedford item 10)

179. Microcase version 2.11, Main program and entry module (Bedford item 10)

180. Microcase version 2.11, main program and entry module (Bedford item 10)

181. Microcase version 2.11, Recode, tabular and mapping module (Bedford item 10)

182. Microcase version 2.11, recode, tabular and mapping module (Bedford item 10)

183. Microcase version 2.11, set up, convert and sample data sets (Bedford item 10)

184. Microsoft disc 1 setup (Microsoft MS dos 6.21 plus enhanced tools) (Bedford item 7)

185. Microsoft DOS 5.0, Discs 1&2 (Gorham item 50)

186. Microsoft Entertainment Pac, Vol. 1, Games (Gorham item 50)

187. Microsoft Excel for Windows, disc 1 (Gorham item 49)

188. Microsoft Excel for Windows, disc 2 (Gorham item 49)

189. Microsoft Excel for Windows, disc 3 (Gorham item 49)

190. Microsoft Excel for Windows, disc 4 (Gorham item 49)

191. Microsoft Excel for Windows, disc 5 (Gorham item 49)

192. Microsoft Excel for Windows, Help (Gorham item 50)

193. Microsoft Excel for Windows, help/ library (Bedford item 10)

194. Microsoft Excel for Windows, Library (Gorham item 50)

195. Microsoft Excel for Windows, set up (Gorham item 50)

196. Microsoft Excel for Windows, setup (Bedford item 10)

197. Microsoft for Windows, set up disc 1 (Bedford item 10)

198. Microsoft IntelliPoint for the Microsoft Mouse Disk 1 setup (Bedford item 10)

199. Microsoft Money, Set up (Gorham item 50)

200. Microsoft Publisher discs 1-3 (Gorham item 50)

201. Microsoft TruType, Font Pac 2 for Windows, Disc 1 Set up and Discs 1, 2, 3 (Gorham item 49)

202. Microsoft Windows, Version 3.1 Operating System (Gateway 2000) – Disc 2 (Gorham item 47)

203. Microsoft Windows, Version 3.1 Operating System (Gateway 2000) – Disc 3 (Gorham item 47)

204. Microsoft Windows, Version 3.1 Operating System (Gateway 2000) – Disc 5 (Gorham item 47)

205. Microsoft Windows, Version 3.1 Operating System (Gateway 2000) – Disc 6 (Gorham item 47)

206. Microsoft Windows, Version 3.1 Operating System (Gateway 2000) – Disc 7 (Gorham item 47)

207. Microsoft Windows, Version 3.1 Operating System (Gateway 2000), Disc 1 (Gorham item 47)

208. Microsoft Word for Windows, conversions – disc 5 (Bedford item 10)

209. Microsoft Word for Windows, conversions-disc 5 (Bedford item 10)

210. Microsoft Word for Windows, drawing/ equation editor-disc 3 (Bedford item 10)

211. Microsoft Word for Windows, drawing/ equation editor-disc 3 (Bedford item 10)

212. Microsoft Word for Windows, on line help – disc 6 (Bedford item 10)

213. Microsoft Word for Windows, on line help-disc 6 (Bedford item 10)

214. Microsoft Word for Windows, program disc 2 (Bedford item 10)

215. Microsoft Word for Windows, programs disc 2 (Bedford item 10)

216. Microsoft Word for Windows, proofing tools – disc 4 (Bedford item 10)

217. Microsoft Word for Windows, proofing tools – disc 4 (Bedford item 10)

218. Microsoft Word for Windows, set up – disc 1 (Bedford item 10)

219. Microsoft Works, discs 1-4 (Gorham item 50)

220. Microsoft, Intellipoint for the Microsoft Mouse, Disc 1 setup (Gorham item 47)

221. Microword Data Bank and Zip (Bedford item 10)

222. Misc. syc. stuff 6/12/89 (Bedford item 10)

223. Misc tools, etc. (Bedford item 10)

224. My Label Designer, disk 2 of 2 (Bedford item 10)

225. My Software Company disk 1 of 2 (Bedford item 10)

226. Network version 12/18/92 criminology and instruction through Microcase. (Bedford item 10)

227. OmniScan, Win Disc 1 (Gorham item 49)

228. OmniScan, Win Disc 2 (Gorham item 49)

229. OmniScan, Win Disc 3 (Gorham item 49)

230. Paradox, Borland System Disc 2/3 (Gorham item 49)

231. PC Globe Version 5.0, Disc 1 (Gorham item 49)

232. PC Globe Version 5.0, Disc 2 (Gorham item 49)

233. PC Kwik Power Pac, Discs 1 & 2 (Gorham item 50)

234. PC Kwik Power Pac, Version 2.12 (Gorham item 49)

235. PC Tools Big Back 11/9/90 disc 1 of 2 (Bedford item 10)

236. PC Tools Dos Utilities 12/94, (Bedford item 7)

237. PC Tools for Windows, disc 1 version 2 (Bedford item 10)

238. PC Tools for Windows, disc 2 (Bedford item 10)

239. PC Tools for Windows, disc 3 (Bedford item 10)

240. PC Tools for Windows, disc 4 (Bedford item 10)

241. PC Tools for Windows, disc 5 (Bedford item 10)

242. PC Tools for Windows, dos restore (Bedford item 10)

243. PC Tools for Windows, dos utilities (Bedford item 10)

244. PC USA 2.0 Instant Profiles of all 50 States and Puerto Rico (1 of 1) (Gorham item 47)

245. PC-Kwik Ram Disc (Gorham item 49)

246. Personal Programmer 1/2 (Gorham item 49)

247. Personal Programmer Disc 3 (Gorham item 49)

248. Pizazz + Plus, Utility, Pizazz + Plus PZP 2040063480 (Gorham item 50)

249. Pizazz Plus Highjaak Pro, Windows Version 1993, Disc 1 of 3 (Gorham item 49)

250. Pizazz Plus Highjaak Pro, Windows Version 1993, Disc 2 of 3 (Gorham item 49)

251. Pizazz Plus Highjaak Pro, Windows Version 1993, Disc 3 of 3 (Gorham item 49)

252. Political Support in Canada pre- and post-1988 (Bedford item 10)

253. Political Support in Canada, 1983 and 84 (Bedford item 10)

254. Position requests 9-94, (Bedford item 7)

255. Precision Pointer, Utility Disc, version 3.10A (Gorham 24)

256. Print cache, version 3.0 (Bedford item 10)

257. Print cache, version 3.1 8/31/93 (Bedford item 10)

258. Prodigy, Installation Disc 1 (Gorham item 49)

259. Publishers Power Pak Microsoft Windows 3.0 Edition Version 1.2 (Gorham item 49)

260. QA Plus, Gateway 2000 Edition DIAG-SOFT (Gorham item 50)

261. QPRO, docs analysis system program files (Bedford item 10)

262. Quattro Pro for Windows (Gorham item 49)

263. Quattro Pro for Windows (Gorham item 49)

264. Quattro Pro for Windows (Gorham item 49)

265. Quicken 2.0 for Windows, Install Disc (Gorham item 49)

266. REG. WinWeather from Insanely Great Software. (Gorham item 14)

267. Regular Full Boot (stacker, etc.) (Gorham item 50)

268. Root, batch, util., net., word/docs (Bedford item 10)

269. Root, net, badge, util., tools, QEMM (Bedford item 10)

270. Rust, Webster, McCrae, Barnes control room program disc version 1.0 (Bedford item 7)

271. RWS Complete from Rocco 3/95 (Gorham item 49)

272. Scenery disc 12, New York, Montreal, Halifax (Gorham item 47)

273. Showcase Instructional Materials, North American Crime and Deviants (Bedford item 10)

274. Showcase Instructional Materials, North American Politics, Canada 2 and 1 (Bedford item 10)

275. Showcase Presentational Software America 1920-1980 (Gorham item 49)

276. Showcase presentational software disc 2, version 4.01 (Bedford item 7)

277. Showcase Presentational Software St. Louis (Bedford item 10)

278. Showcase presentational software version 4.5 (Bedford item 10)

279. Showcase presentational software Victorian England and Wales (Bedford item 10)

280. Showcase Presentational Software, Colonial America (non-commercial) (Gorham item 49)

281. Showcase Presentational Software; Canadian 84 Election A&B (Bedford item 10)

282. Showcase presentational software: Canadian 84 Elections C&D (Bedford item 10)

283. Showcase V.3 and V.4 (Gorham item 49)

284. Sierra, Kings Quest 5, startup disc, and disc 1 (Gorham item 49)

285. Sierra, Kings Quest 5, startup disc, and disc 2 (Gorham item 49)

286. Sierra, Kings Quest 5, startup disc, and disc 3 (Gorham item 49)

287. Sierra, Kings Quest 5, startup disc, and disc 4 (Gorham item 49)

288. Sierra, Kings Quest 5, startup disc, and disc 5 (Gorham item 49)

289. Sierra, Kings Quest 5, startup disc, and disc 6 (Gorham item 49)

290. Sierra, Kings Quest 5, startup disc, and disc 7 (Gorham item 49)

291. Social Statistics and doing statistics using MicroCase second edition (Bedford item 10)

292. Sociology USM (Gorham item 7)

293. Sociology USM (label over a microcase analysis system) (non-commercial) (Bedford item 7)

294. Sociology USM (label over an online version 1.1 install disc for PCs) (Bedford item 7)

295. Sociology USM (no further id on label) (Bedford item 7)

296. Sociology USM (no further id)/(with X through it) (Bedford item 7)

297. Sociology USM (non-commercial) (Gorham item 50)

298. Sociology USM 1.5, (Bedford item 7)

299. Sociology USM 3/27/97 (Bedford item 10)

300. Sociology USM Candidate Calendar (Bedford item 11)

301. Sociology USM CD ROM (Bedford item 9)

302. Sociology USM CIRT ing stuff (hard to read) (Bedford item 7)

303. Sociology USM Dept. labels, (Bedford item 7)

304. Sociology USM Dept. picture (Bedford item 11)

305. Sociology USM F96, S97 (Bedford item 10)

306. Sociology USM GSS94, (Bedford item 7)

307. Sociology USM Laz 1/96 (Bedford item 7)

308. Sociology USM material for cuth workshop (Gorham item 14)

309. Sociology USM Methods Class Bibliography (Bedford item 7)

310. Sociology USM OSC 2/10 bookmarks, Sociology USM (Bedford item 10)

311. Sociology USM Power Tools and Winzip, (Bedford item 7)

312. Sociology USM S4UPEXE ck.exe. (Bedford item 10)

313. Sociology USM S97 Course stuff, (Bedford item 7)

314. Sociology USM S97 grades, (Bedford item 7)

315. Sociology USM Soc. 210 bookmarks (with a line through it) (Bedford item 11)

316. Sociology USM Stark 601 (install c: . . .) (Bedford item 7)

317. Sociology USM startup, 3/28/97 (Bedford item 10)

318. Sociology USM TRACON. (Gorham item 7)

319. Sociology USM W31ET4.Exe. Diamond Speed Stardrv. (Bedford item 7)

320. Sociology USM, states 95 Maine (Bedford item 10)

321. Software installation disc OS/2 2.1 (Bedford item 10)

322. Stacker 4.0 Windows and DOS disc 2 (Bedford item 10)

323. Stacker Software Doubles your Disk Capacity (Bedford item 7)

324. Stacker Software, doubles your disc capacity 2.0 utilities disc, 2.0 program disc (Gorham item 50)

325. Standard and Poor stock reports for windows (Bedford item 10)

326. Stark bank 93 bank 95 (Bedford item 10)

327. States and Counties of the USA (Bedford item 10)

328. STF 3 Data Microcase Version, Preliminary 7/15/92 (Gorham item 49)

329. Sticker 4.1 Windows and DOS disc 1 set up instructions (Bedford item 10)

330. Stone and Assoc. Software, My Letters, Numbers and Words (Gorham item 49)

331. Superfont Pac, Vol 1 (Gorham item 49)

332. Survey Showcase, Presentational Software (Gorham item 50)

333. SymCity 2000 Disc 1 (Gorham item 49)

334. SymCity, 2000 Disc 2 (Gorham item 49)

335. SymCity, the City Simulator (Gorham item 49)

336. SymCity, the City Simulator, Discs 1 & 2 (Gorham item 50)

337. TCP3270 for Windows (Gorham item 49)

338. The American Heritage Dictionary, Disc 1 (Gorham item 49)

339. The American Heritage Dictionary, Disc 2 (Gorham item 49)

340. The American Heritage Dictionary, Disc 3 (Gorham item 49)

341. The American Heritage Dictionary, discs 1-3 (Gorham item 50)

342. The Learning Co Midnight Rescue, Discs 1 & 2 (Gorham item 50)

343. The Learning Co., Math Rabbit (Gorham item 49)

344. The Learning Co., Math Rabbit (Gorham item 50)

345. The Learning Co., Reader Rabbit (Gorham item 49)

346. The Learning Co., Reader Rabbit (Gorham item 50)

347. The Learning Co., Reader Rabbit 1 (Gorham item 49)

348. The Learning Co., Supersolvers Midnight Rescue (Gorham item 49)

349. The Learning Co., Treasure Cove Program/Data 1 (Gorham item 47)

350. The Learning Co., Treasure Cove, Data 2/Data 3 (Gorham item 47)

351. The Learning Co., Treasure Math Storm Date 1/Data 2 (Gorham item 47)

352. The Learning Co., Treasure Math Storm Program (Gorham item 47)

353. The Learning Co., Treasure Mountain (Gorham item 49)

354. The Learning Co., Writer Rabbit (Gorham item 49)

355. Timeworks Publish It, master disc 1 (Bedford item 10)

356. Timeworks Publish It, master disc 2 (Bedford item 10)

357. Timeworks Publish It, master disc 3 (Bedford item 10)

358. Timeworks Publish It, master disc 4 (Bedford item 10)

359. Timeworks, Publish It Master Discs 1-8 (Gorham item 50)

360. Tools, Dos and Windows SD Winsoc (Gorham item 7)

361. TRACON II IBM and compatibles version 2.0 (Bedford item 10)

362. TRACON II Sector disc (Bedford item 10)

363. Tracon, version 1.5 (Bedford item 10)

364. Trash and testing files back up 2/24/95 (Bedford item 10)

365. TurboTax, Complete/Zip (Gorham item 49)

366. Typist Plus Graphics, disc 1 (Bedford item 10)

367. Typist Plus Graphics, disc 2 (Bedford item 10)

368. Typist program (with an X through it) (Bedford item 7)

369. Unicom 4.0 (Gorham item 49)

370. University of Maine System System Internet Clients for Windows, Disc 1 (Gorham item 49)

371. University of Maine System System Internet Clients for Windows, Disc 2 (Gorham item 49)

372. Unlabeled Disc (Gorham item 49)

373. USA Counties, disc 1 of 2 (Bedford item 10)

374. USA Counties, disc 2 of 2 (Bedford item 10)

375. USA East Disc 1 (Gorham item 49)

376. USA East Disc 2 (Gorham item 49)

377. USA East Disc 3 (Gorham item 49)

378. USA East Disc 4 (Gorham item 49)

379. USA East Disc 5 (Gorham item 49)

380. USA West Disc 1 (Gorham item 49)

381. USA West Disc 2 (Gorham item 49)

382. USA West Disc 3 (Gorham item 49)

383. USA West Disc 4 (Gorham item 49)

384. USA West Disc 5 (Gorham item 49)

385. USA West F, S, Interface Disc (Gorham item 49)

386. USM inquiry 12/17/92 (Bedford item 10)

387. Video for Windows (Bedford item 10)

388. VITA T/S S97 spreadsheet (Bedford item 10)

389. Warp driver installation diskette disc 1 (Bedford item 10)

390. Win95 Startup disc (Gorham item 7)

391. Win95 Startup disc 9/96 (Gorham item 50)

392. Win95 startup, (Bedford item 7)

393. Windmaster Set up (Gorham item 49)

394. Windows Draw, Installation discs 1-6 (Gorham item 50)

395. Winfax Pro, Disc 1 Version 3.0 (Gorham item 47)

396. Winfax Pro, Disc 2, Version 3.0 (Gorham item 47)

397. Winfax Pro, Disc 3, Version 3.0 (Gorham item 47)

398. Winmaster Disc 2 (Gorham item 49)

399. Winmaster Super PC Kwik (Gorham item 49)

400. Word and QPro docs 7/18/91 (Bedford item 10)

401. Word DOCS August 1994, (Gorham item 47)

402. Words 5.2 IP Word 3 Batch 94 Archive (Gorham item 49)

403. Workbooks 5/95 (Gorham item 47)

404. World and Maine, for Intro, Maine Showcase (Gorham item 50)

405. X Tree for Windows, Disc 1 and Disc 2 (Gorham item 49)

406. Zips 11/19/90 (Bedford item 10)

407. Zips and directories covering route, tools 6/28/90 (Bedford item 10)

408. Zips Word docs/smart docs/math show 3/13/90 4/11/90 (Bedford item 10)

RELEVANT STATUTES

17-A M.R.S.A. § 254. Sexual abuse of minors

1. A person is guilty of sexual abuse of a minor if:

A. Having attained the age of 19 years, the person engages in a sexual act with another person, not the actor's spouse, who has attained the age of 14 years but has not attained the age of 16 years, provided that the actor is at least 5 years older than the other person; or

B. Deleted. Laws 1989, c. 401, § A, 3.

C. Having attained the age of 21 years, the person engages in a sexual act with another person, not the actor's spouse, who has attained the age of 16 years but not the age of 18 years, and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution, and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled.

2. It is a defense to a prosecution under subsection 1, paragraph A, that the actor reasonably believed the other person to have attained his 16th birthday.

3. Violation of subsection 1, paragraph A is a Class D crime; and violation of subsection 1, paragraph C is a Class E crime; except that the sentencing class for a violation of subsection 1 is one class higher if the State pleads and proves:

A. The actor was more than 10 years older than the other person; or

B. The actor knew the other person was related to the actor within the 2nd degree of consanguinity.

C. Repealed. Laws 1997, c. 460, § 3.

17 M.R.S.A. § 2922. Sexual exploitation of a minor

1. Offense. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, he intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not his spouse, who is in fact a minor, to engage in sexually explicit conduct; or

B. Being a parent, legal guardian or other person having care or custody of another person, who is in fact a minor, he knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed.

2. Penalty. Sexual exploitation of a minor is a Class B crime, except that any person convicted of this crime shall be sentenced by imprisonment for not less than 5 years. If the State pleads and proves a prior conviction under this section, then the crime is a Class A crime, except that any person convicted of this 2nd crime shall be sentenced by imprisonment for not less than 10 years. The court shall not suspend either minimum term of imprisonment unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor, the history and character

of the defendant, and shall only suspend the minimum term if it is of the opinion that the exceptional features of the case justify the imposition of another sentence.

17 M.R.S.A. § 2924. Possession of sexually explicit materials

1. Definitions. As used in this section, the term "sexually explicit conduct" means any of the following acts:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C;

B. Bestiality;

C. Masturbation;

D. Sadomasochistic abuse for the purpose of sexual stimulation;

E. Lewd exhibition of the unclothed genitals, anus or pubic area of a person. An exhibition is considered lewd if the depiction is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or

F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.

2. Offense. A person is guilty of possession of sexually explicit material if that person intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts

another person engaging in sexually explicit conduct; and

A. The other person has not in fact attained the age of 14 years; or

B. The person knows or has reason to know that the person has not attained the age of 14 years.

3. Defense. It is defense to a prosecution under this section that the person depicted was the spouse of the person possessing the sexually explicit material at the time the material was produced.

4. Age of person depicted. The age of the person depicted may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age of the person depicted.

5. Penalty. Possession of sexually explicit material is a Class D crime. If the State pleads and proves a prior conviction under this section, the crime is a Class C crime.

6. Contraband. Any material that depicts a person who has not attained the age of 14 years engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION NINE
SO.CUMBERLAND

SEARCH WARRANT

TO: Any officer authorized by law to execute this search warrant. On the basis of the

[X] Affidavit(s) by:

Detective Steven Reece, dated September 30, 1997

which affidavit(s) are attached to the original hereof and made a part thereof to be filed in the District Court,

I am satisfied that there is probable cause to believe that there are grounds for the issuance of a search warrant. You are therefore commanded to search the place(s) and/or person(s) described below for the property and/or person(s) described below and, if the property and/or person(s) is/are found, to seize such property and/or person(s) and prepare a written inventory of the property seized.

Place(s) or Person(s) to be Searched:

1. Peter Lehman, DOB 10/30/45

2. University of Southern Maine Sociology building and Maine Council on Economic Education building located at 120 Bedford Street, Portland, ME. The building is a 2 story, with white vinyl siding. The front entrance is to the left side of the building. There is a porch with a white storm door to the left of the door. On the trim is the number

120. The office of Mr. Peter Lehman is on the second floor.

3. University of Maine system network. This is the computer network system for the entire University of Maine. Including, but not limited to, the University of Southern Maine's computer center located at 96 Falmouth Street, Portland, Maine, which Peter Lehman would have been able to access and would have been able to store information.

4. 1993 Toyota Previa van, white in color, ME Registration #6188ZZ, VIN # JT3AC21S3P1016869, expiration date 09/30/97. The Department of Motor Vehicles has that plate listed to a Peter Lehman, DOB 10/30/45, of 452 South Street, Gorham, ME. Joint owner is listed as a Susan J. Olson.

5. 452 South Street, Gorham, ME 04038. Detective Robert Gaudette, known to me as a Gorham police detective, checked the Gorham tax records for that residence. It is described in tax records as 1 3/4 story residence with a 36'x26' main building and a 28'x24' garage. Det. Gaudette stated the residence color is a brownish/reddish stain. Theresa Peavey and Allison O'Leary stated that this home was brownish in color.

Property or Article(s) to be Searched for and seized:

1. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of Theresa Peavey, DOB 03/23/79

2. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives,

computer files, digital images of Koral Schirmacher, DOB 07/17/81

3. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of Allison O'Leary, DOB 09/13/84

4. Including, but not limited to, photographs, photo packages, photograph receipts, slides, negatives, computer files, digital images of minors

5. Photographic film which appears to be exposed but unprocessed

6. All computer equipment and computer related equipment, including, but not limited to laptops, monitors, key boards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operations of systems and programs, which Peter Lehman would have been able to access, including, but not limited to, copies of the contents thereof

7. Digital cameras, cameras, and camera equipment

8. Any writings which include the names of Theresa Peavey, Koral Schirrmacher, Allison O'Leary, Tina Doucette, Jaime Mains, Kayla Ingham, Lori Griffin, and Cleo

9. All computer related records, including, but not limited to, Internet provider records, access codes, and passwords

Reason for Search and Seizure:

The affiant, upon oath, states that he has probable cause to believe and does believe that the

above search for items are evidence of the commission or attempted commission of the crimes of Sexual Exploitation of a Minor, Title 17, Section 2922, and Possession of Sexually Explicit Materials, Title 17, Section 2924.

Methodology of the Search and Seizure:

1. Any law enforcement officers conducting this search shall do the following and/or may request and utilize the assistance of non-law enforcement officer(s) versed in computers, computer software and hardware in order to accomplish any or all of the following:

   A. Defeat and/or bypass any password or security device or encryption in the computer hardware or computer software and;

   B. Access print-out review and seize a listing of all computer directories, sub-directories, and document/file names including accessing the contents thereto and;

   C. Access print-out review and seize any record or electronic entry(ies) memorializing the dates and/or times of entry(ies) into the computer and/or the deletion of any files or data

Name of Owner or Occupant of Premises, if known:

1. University of Southern Maine, main office located at 96 Falmouth St., Portland, Maine; also owning the building at 120 Bedford Street, Portland, Maine

2. Peter Lehman, DOB 10/30/45, owner of 1993 Toyota Previa, ME Reg. 6188ZZ, along with joint owner Susan J. Olson

3. Peter Lehman, DOB 10/30/45, owner of 452 South Street, Gorham, ME

DAYTIME WARRANT ONLY

This warrant shall be executed between the hours of 7:00 AM and 7:00 PM and shall be returned, together with a written inventory, within 10 days of the issuance hereof, to the District Court, the District Division of Southern Cumberland.

EITHER NIGHTTIME OR DAYTIME WARRANT

For reasonable cause shown in the affidavit(s)/evidence, this warrant may be executed in the daytime or in the nighttime (7:00 PM to 7:00 AM) and shall be returned together with a written inventory, within 10 days of the issuance, hereof, to the District Court, the District Division of Southern Cumberland.

(DELETE SECTION NOT APPLICABLE)

Issued at Portland, Maine in the County of Cumberland this ___ day of _____ 1997.

Time: _____ _____

District Judge/Complaint Justice

_____

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION NINE
SO. CUMBERLAND

IN RE:
Search Warrant
ME.R.Crim.P.41
Me.R.Civ.P.80I

AFFIDAVIT AND REQUEST FOR SEARCH WARRANT

Affidavit of Detective Steven A. Reece

TO ANY JUDGE OF THE DISTRICT COURT OR JUSTICE OF PEACE:

I, Steven A. Reece, being a duly sworn officer on oath state the following. I have been a police officer for the City of Portland, Maine for the past 13 years. I have been a detective for the Portland Police Department for the last 8 years. Currently, I am primarily assigned to investigate child maltreatment cases. These include physical and sexual abuse cases. I have had training in child maltreatment investigations. I have taught at the Maine Criminal Justice Academy reference [sic] these investigations. I have investigated cases involving the use of photography, video taping, and the use of computers. In all, I have investigated more than 750 cases of child maltreatment in the last 5½ years. As a result of my experience, training, readings and education, this affiant has learned that persons who take photographs and/or video tapes of a child will keep these photographs and/or video tapes for later use and not destroy them. I have investigated three cases in which photographs and/or video tape was used and

later the photographs and/or video tapes were recovered. I am also familiar with camera equipment, both regular cameras and digital cameras. Digital cameras are used to download the stored information into computers. I am not an expert in computers and would need expert and qualified assistance in the retrieval of any information stored in computers.

The following facts and circumstances lead me to believe that probable cause exists to grant this search warrant to look for evidence of the commission or attempted commission of the crimes of Sexual Exploitation of a Minor, Title 17, Section 2922, and Possession of Sexually Explicit Materials, Title 17, Section 2924.

1. I, Steven A. Reece, do hereby state and depose that on 09/09/97, Officer O'Connor, known to me as a Portland police officer, spoke to a Koral Schirrmacher, DOB 07/17/81. Off. O'Connor took a signed statement from Koral Schirrmacher. See attachment #1.

2. On 09/23/97, I, Steven A. Reece, spoke to Koral Schirrmacher to get additional information. Koral stated that her thigh was touched and then Peter went up under her clothes and touched the bottom of her breast, that Koral put her arm on the top of her breast and asked for a cigarette and moved to get one. As stated previously in her statement, this incident occurred at 295 Forest Avenue in Portland.

3. On 09/23/97, I, Steven A. Reece, had Koral Schirrmacher make a drawing of the interior of Peter's office. She labeled this drawing and signed the drawing. See attachment #2.

4. On 09/25/97, at 1055 hrs., I, Steven A. Reece, had Koral Schirrmacher call the University of Southern Maine, Portland Campus, main phone number and ask for Peter Lehman. Koral Schirrmacher left a message for Peter Lehman asking him to call 767-8704. This number is to a numeric pager that belongs to me, Detective Steven Reece.

5. On 09/25/97, at approximately 1322 hrs, I, Steven A. Reece, received a page that left the phone number 780-4758.

6. On 09/25/97, at approximately 1409 hrs., Koral Schirrmacher returned the page, calling 780-4758. She spoke to a man who identified himself as Peter Lehman. Mr. Lehman denied having any knowledge of knowing who Kori was. The name that Koral Schirrmacher prefers to be called is Kori. This phone call was recorded.

7. On 09/25/97, approximately 5 minutes after the previous phone call, Koral Shirrmacher called Peter Lehman again. On this phone call, Peter Lehman acknowledged that he knew Kori and had spoken to her. When she asked if he remembers that she was in his office, he stated that he did not remember. He also denied having any photographs of Koral Schirrmacher or touching her on the breast. This call was also recorded.

8. On 09/25/97, I, Steven A. Reece, had Koral Schirrmacher point out to me the office of Peter Lehman. She pointed out to this detective #120 Bedford Street, Portland, Maine as his work place and with him having an office on the second floor. As described to me, she stated there is a name plate on his office door identifying it as his office.

9. The plate number, Maine registration #6188ZZ, is listed through the Department of Motor Vehicles as belonging to Peter Lehman of 452 South Street, Gorham, DOB 10/30/45, on a 1993 Toyota Previa van, white in color, VIN JT3ACZ1S3P1016869. It has an expiration date of 09/30/97. See attachment #3 for DMV listing.

10. On 09/25/97, I, Steven A. Reece, spoke to Theresa Peavey, DOB 03/23/79, at her home located at 100 Holm Avenue in Portland. Theresa Peavey has stated that she has posed in the nude numerous times for Peter Lehman with the first time being when she was "16½ years old or a little older", with the most recent time being on 09/10/97. See attachment #4 for her statement.

11. On 09/25/97, I, Steven A. Reece, had Theresa Peavey make a drawing of the layout of the interior of the home of Peter Lehman. She describes the outside as brown in color, 2 stories, with a 2 car garage. See attachment #5 for her drawing.

12. On 09/25/97, I, Steven A. Reece, had Theresa Peavey point out the office of Peter Lehman. She pointed out to this detective #120 Bedford Street, Portland, Maine as his work place, with his office on the second floor. Theresa Peavey stated that his old office was on the first floor.

13. That Detective Paul Kelley, known to me as Portland Police Department detective, confirmed with the University of Southern Maine Police that Peter Lehman's office is located at 120 Bedford Street, Portland, Maine.

14. On 09/26/97, I, Steven A. Reece, spoke to Tina Doucette, DOB 12/20/81, of 20 High Street, 1st floor,

Portland, ME. Tina Doucette stated that she had met Peter when she was 12 years old and most recently saw him again this June or July 1997. Tina Doucette stated that Theresa Peavey has told her that she has posed nude for Peter and he was putting photographs of Theresa Peavey in the computer. Tina Doucette also knows that girls by the name of Allison, Kori and Jamie Mains have gone out with Peter in the past. Tina Doucette stated that she did not pose nude for Peter, although she was asked.

15. On 09/29/97, I, Steven A. Reece, spoke to an Allison O'Leary, DOB 09/13/84, of 65 Elm Street, Portland, which is the Lighthouse Shelter. The Lighthouse Shelter is a staffed facility providing a place for homeless minors to stay. Allison O'Leary told me she has lived on the street for 7 months and first met Peter around June 1997 when she was 12 years old. Allison O'Leary also gave me a statement stating that she posed nude and exposed her genitals to Peter Lehman so he could take photographs with a digital camera. Allison O'Leary has seen her picture in his computer, along with pictures of Jamie Mains, Kayla Ingham (14 yrs.), and a girl named Cleo. See attachment #6 for details.

16. On 09/29/97, I, Steven A. Reece, had Allison O'Leary make a drawing of the layout of the interior of the home of Peter Lehman. She describes the outside as brownish in color, two stories, with a two car garage. See attachment #7 for her drawing.

I, Steven A. Reece, do hereby swear under oath that the information set forth in this affidavit is true and correct to the best of my knowledge, information and belief.

_____

Detective Steven A. Reece

Date: _____

State of Maine
Cumberland, SS

Personally appeared before me the above named, Steven A. Reece, and gave oath that the statements contained herein attributable to him are true and when based on knowledge and belief, he believes them to be true.

_____

Judge/Maine District Court

Date: _____

State of Maine
Cumberland, ss.
Clerk's Office
Dec – 4 A 9:43

SUPERIOR COURT
DOCKET NO. CR-97-1874

STATE OF MAINE

vs.

PETER LEHMAN
10-30-45

INDICTMENT FOR VIOLATION OF

COUNTS 1-54: T17 M.R.S.A. 2922
SEXUAL EXPLOITATION OF
A MINOR
CLASS B CRIME
ORI#0030500/PD#97-43722

COUNT 55: T17-A M.R.S.A. 254(1)(D)
SEXUAL ABUSE OF A MINOR
CLASS C CRIME
ORI#0030500/PD#97-43722

THE GRAND JURY CHARGES:

COUNT 1:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 2:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 3:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 4:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 5:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 6:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 7:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 8:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 9:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 10:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 11:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 12:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 13:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 14:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 15:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 16:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 17:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 18:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 19:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 20:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 21:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 22:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 23:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Allison O'Leary, age 12, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 24:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Kayla Ingham, age 14, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 25:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Kayla Ingham, age 14, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 26:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Kayla Ingham, age 14, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 27:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Kayla Ingham, age 14, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 28:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Kayla Ingham, age 14, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 29:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 30:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 31:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 32:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 33:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 34:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 35:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 36:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 37:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 38:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 39:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 40:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 41:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 42:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 43:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 44:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 45:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 46:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

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That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 48:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 49:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 50:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 51:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 52:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 53:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Jamie Mains, age 15, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 54:

That during the time period from March 24, 1995 to March 22, 1997 in Cumberland County, Maine, PETER LEHMAN did intentionally or knowingly employ, solicit, entice, persuade, use or compel another person who was not his spouse, namely Theresa Peavey, who had not attained the age of 18, to engage in sexually explicit conduct intending to photograph that sexually explicit conduct himself.

COUNT 55:

That during the Summer of 1997 in Cumberland County, Maine, PETER LEHMAN did engage in a sexual act with Jamie Mains, age 15, who was not his spouse and at that time PETER LEHMAN was 51 years of age.

A True Bill

December 4, 1997
Date

/s/ Illegible
Foreperson

Supreme Court, U.S.
FILED
DEC 27 1999
CLERK

(2)

No. 99-746

In The

Supreme Court of the United States

PETER LEHMAN,

Petitioner,

v.

STATE OF MAINE,

Respondent.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court Sitting As The Law Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Are the Fourth Amendment particularity requirement and First Amendment scrupulous exactitude standard violated by the issuance of warrants authorizing seizure and subsequent search of all computers and computer-related equipment in the defendant's home, office and automobile when the affidavits established probable cause to believe that the defendant was taking pornographic pictures of several different children with a digital camera at his home and office and storing those images on a computer, but did not identify the location of the images in the computer?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, the State of Maine, respectfully requests that the Court deny the Petition for a writ of certiorari seeking review of the decision and judgment of the Maine Supreme Judicial Court, sitting as the Law Court ("Law Court"), issued on July 30, 1999, reproduced in the Appendix to the Petition for Writ of Certiorari ("Pet. App.") at 1-12, and reported in *State of Maine v. Peter Lehman*, 1999 ME 124, 736 A.2d 256.

STATEMENT OF THE CASE

The petitioner here, Peter Lehman, asks the Court to address the degree of particularity required by the Fourth Amendment when executing a search warrant upon a computer for evidence of child pornography which petitioner now concedes there was probable cause to believe would be found therein, asserting that this is an important issue which has divided the lower courts. However, the Court should deny the writ because the conflict alleged by petitioner between the Law Court's decision and the decisions of the lower federal courts cited by petitioner is illusory.

The parties generally agree that the material facts are undisputed except in a few significant particulars. With respect to the September 30, 1997 warrant, petitioner emphasizes that the warrant authorized search of the university's "entire" computer system. *Petition* 2 and 4. Petitioner does not mention that this aspect of the warrant was limited to a search of the portions of the system

to which petitioner would have had access to store information. *Pet. App.* 61. Similarly, petitioner does not assert that he had a reasonable expectation of privacy in the university's computer system, and does not mention that he conceded before the trial court that the university consented to a search of its computers for the evidence sought by the police. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 72-73.

Petitioner also asserts that the police seized three computers and over 400 computer disks from his home that contained hundreds of files "which were irrelevant to the investigation." *Petition* 4. The warrant, however, *authorized* seizure of the computers and the disks to allow a search for information relevant to the investigation, i.e., images of child pornography. *Pet. App.* 62. The warrant also authorized the police to utilize the services of a computer expert to help search the computers and computer-related equipment for that relevant information. *Pet. App.* 63.

Petitioner further asserts that the "[p]olice seized hundreds of other irrelevant items, including: videotapes, magazines . . . compact discs of Bach Motets, Mozart Horn Concertos, and James Galway's Christmas Carols . . . " *Petition* 4. Petitioner does not mention that the videotapes and magazines had been seized under the plain view doctrine as contraband, because they were child pornography, bearing such sexually explicit titles as "Teenagers in Horny Action," and "Young Snatch." Superceding/Supplemental Search Warrant (and Supporting Affidavit) dated October 10, 1997, reproduced in the attached Respondent's Appendix ("Resp. App."). Respondent does not agree that possession of videotapes

and magazines depicting child pornography is "irrelevant" in a sexual exploitation of a minor investigation. Furthermore, petitioner does not mention that the musical compact discs identified above were seized from the second floor study in petitioner's house, the location of the computer on which the victims saw their pictures. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 74. Many more musical compact discs in locations in the house not proximate to computers were not seized. *Id.*

Still further, petitioner asserts that only one computer-related item, a detached hard drive found in petitioner's basement, "contained any evidence of criminal activity," and that "at least 407 computer-related items . . . were totally irrelevant to the prosecution." *Petition* 5. On the contrary, while the prosecution represented to the trial court at the suppression hearing that the basis of the criminal charges later lodged against petitioner was evidence found on the detached hard drive in the basement, a significant amount of other computer-related items would have had relevance to the prosecution had this matter gone to trial, e.g., the digital camera used to take the sexually explicit photographs of the young girls whose statements were attached to the initial police affidavit as well as the computer monitor on which the girls saw their photographs. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 76-77.

Most significantly, petitioner omits any discussion of the Superceding/Supplemental Search Warrant, and Affidavit in support thereof, dated October 10, 1997, which

authorized the police to search the computers and computer-related equipment seized during the execution of the initial warrant for "computer images of minors under 14 years of age . . . which are evidence of the offenses of Possession of Sexually Explicit Material and Sexual Exploitation of a Minor." *Resp. App.* 7. The affidavit in support of the second warrant sought authorization for the police to utilize the services of a medical expert to help determine the ages of the children observed in the previously-seized magazines, videotapes, and computer images. *Resp. App.* 12, 13.

With respect to the December 4, 1997 indictment of petitioner, petitioner alleges that "[o]nly 24 of the 54 sexual exploitation counts, however, involved minors whose images were sought on the warrant (and for which probable cause existed), while 30 of those counts were for sexual exploitation (digital images) of minors whose images were not identified on the warrant." *Petition* 5. Paragraph 4 of the September 30, 1997 warrant, however, authorized the police to search for computer files and digital images of minors, and the two named victims in counts 24-53 were minors. *Pet. App.* 62, 77-84. Furthermore, both of those victims were specifically named in paragraph 8 of the September 30, 1997 search warrant, and the affidavit in support of that warrant provided probable cause to believe that their digital images would be found somewhere in one or more of petitioner's computers. *Pet. App.* 62, 69. The named victim in counts 29-53 was also the named victim in the sexual abuse count (Count 55).

With respect to the motion to suppress, in addition to finding that the search warrant was supported by

probable cause and that the search was not overbroad, the trial court also found that petitioner had failed to make a sufficient preliminary showing to justify an evidentiary hearing [*Franks v. Delaware*, 438 U.S. 154 (1978)], and that the police had acted in good faith and were objectively reasonable in relying upon the warrant issued by the court. *Pet. App.* 17; Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 33-36.

Finally, the Law Court, in its decision in this case, addressing the Fourth Amendment overbreadth argument, stated, "The police knew only that the images of the girls who Lehman allegedly sexually exploited were taken by a digital camera and downloaded on a computer. The description of the computer equipment to be seized was 'as specific as the circumstances and the nature of the activity under investigation permit[ted].' " *Pet. App.* 10 (*quoting Davis v. Gracey*, 111 F.3d 1472, 1478 (10th Cir. 1997)). Addressing the First Amendment "scrupulous exactitude" argument, the Law Court stated, "We reject Lehman's contention that the warrant was required to describe the items to be seized with 'scrupulous exactitude.' The warrant authorized the seizure of photographs and digital images because such items were evidence that Lehman sexually exploited minors – the police did not seize these items because of the content or ideas contained therein." *Pet. App.* 11.

REASONS FOR DENIAL OF THE WRIT

There is no compelling reason for this Court to review the Law Court's decision in this case. First,

contrary to the assertion of petitioner, the Maine court's decision is not in conflict with lower federal court Fourth Amendment particularity cases. Second, the Maine court's decision is consistent with this Court's Fourth Amendment particularity and First Amendment scrupulous exactitude jurisprudence. Third, because of the factual matrix of the case below, a decision by this Court on the issues raised by petitioner would be a mere advisory opinion.

I. THE MAINE DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THE LOWER FEDERAL COURTS.

Petitioner's primary argument is that the Court should grant review because the decision below conflicts with three decisions from the Ninth and Tenth Circuits and the District Court for the Southern District of New York. *Petition* 9-10. A review of those decisions, however, reveals that one of the three decisions actually involves the scope of a subpoena, not the Fourth Amendment's search warrant particularity requirement; a second involves an assessment of the adequacy of probable cause supporting the scope of the search engaged in; and the third involves a search of computer files for child pornography when the warrant only authorized a search for drug information. Furthermore, petitioner acknowledges that the Law Court's decision is in harmony with (indeed, relied on) other decisions from the First, Ninth and Tenth Circuits. *Petition* 8.

In the first case relied upon by petitioner, *United States v. Carey*, 172 F.3d 1268 (10th Cir. 1999), a three judge

panel of the Tenth Circuit decided a case in which the police, in a drug investigation, had seized the defendant's computers with consent from the defendant. *Id.* at 1270. The computers were taken to the police station and a warrant was obtained to search the files on the computers, with the assistance of a computer expert, for records pertaining to illegal drug sales and distribution. *Id.* A subsequent search of the files on the hard drives revealed no evidence related to drugs. *Id.* at 1271. While searching for drug information on the computer, the detective opened a "JPG" file, i.e., an image file rather than a text file, which had a sexually suggestive title and discovered child pornography. *Id.* Rather than obtain a second warrant, the detective opened approximately one hundred additional JPG files with sexually suggestive titles. *Id.* In rejecting the government's proferred "plain view doctrine" justification for the search of the JPG files, the Tenth Circuit found that the detective, by his own admission, expected to find child pornography, not evidence pertaining to drug transactions, with each subsequent opening of a JPG file. *Id.* at 1273. Stating that it was judging this case only on its own facts, the court held that the items seized (the JPG files) were not authorized by the warrant, and because the images of child pornography were in closed files, they were not in plain view. *Id.* Implicit in the panel's decision (and explicit in the concurring opinion filed by Judge Baldock) was that the police would have been authorized to search all of the JPG files if the detective had truly expected to find evidence pertaining to drug trafficking, which was authorized by the warrant. *Id.* at 1276-77. Contrary to holding

that an intermediate step of sorting relevant from irrelevant files was constitutionally required, as asserted by petitioner (*Petition* 9), the court was merely describing an alternative approach used by some courts to deal with "intermingled documents." *Id.* at 1275 (*citing United States v. Tamura*, 694 F.2d 591, 595-96 (9th Cir. 1982)). While recognizing that the police and computer expert took some reasonable steps which are generally useful in avoiding searching files of the type not identified in the warrant, the court held that since the detective did not use the information gained from these steps to limit his search, his subsequent search of files that he did not expect would contain evidence of the type specified in the warrant was unconstitutional. *Id.* at 1276. In this case, unlike the situation in *Carey*, the warrant authorized the police to search petitioner's computer files for evidence of child pornography, evidence of child pornography was found in petitioner's computer equipment, and petitioner was convicted on the basis of that evidence.

In the next case relied upon by petitioner, *In re Grand Jury Investigation Concerning Solid State Devices, Inc. v. United States*, 130 F.3d 853 (9th Cir. 1997), the Ninth Circuit expressly stated that it was not reaching whether the warrant was sufficiently particular, as required by the Fourth Amendment, because it determined that the scope of the search engaged in by the police exceeded the showing of probable cause made by the government to support the search. *Id.* at 856. In this case, petitioner concedes that there was probable cause supporting the government's search of his computer equipment and files for certain images of child pornography. *Petition* 5, 7.

Moreover, the court in *Solid State Devices* was not holding that the government in that case was barred from searching the appellant's computers and computer systems; rather, the court only held that the warrant which authorized search of virtually *all* of appellant's records, not just those stored in computers, was too broad given the limited showing of probable cause in the affidavit justifying such a wide-scale search. *Solid State Devices*, 130 F.3d at 856-57. Indeed, the court admitted that the affidavit very likely would have supported a narrower, more carefully-defined search. *Id.* at 857. Since the court did not discuss the facts detailed in the affidavit, whether such a search would have included the appellant's computers and computer systems is only speculation. Additionally, the Ninth Circuit recognized that under certain circumstances even searches such as the type engaged in by the police in that case would be constitutional depending on the showing of probable cause made by the government. *Id.* at 856. Significantly, since the court was only reviewing appellant's motion for return of seized property, the court did not address whether the evidence obtained as a result of the unconstitutional search would be excluded from introduction at trial. *Id.* at 857 n.2.

In the third case relied upon by petitioner, *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F. Supp. 11 (S.D.N.Y. 1994), the federal District Court was merely interpreting the legitimate scope of a subpoena, not whether a search warrant was sufficiently particular under the Fourth Amendment to guide officer discretion during execution. *Id.* at 12-14. Indeed, the court expressly stated that it was not analyzing this issue under the Fourth Amendment. *Id.* at 13. A subpoena presumes that

a person can be trusted to turn over evidence of an incriminatory nature; a search warrant presumes that a person cannot be trusted to turn over evidence of an incriminatory nature. With respect to a subpoena for computers and computer files, the police can rely upon the target of the subpoena to perform procedures, such as a key word search, to narrow the search to relevant files only. With respect to a search warrant for computers and computer files, the police cannot rely upon the target of the warrant to perform such procedures because of the inherent danger that the information will be destroyed. Therefore, the warrant authorizes the police, as in petitioner's case, to perform those procedures themselves after seizing the hardware. *Pet. App.* 63; *Resp. App.* 1.

The case is also factually dissimilar from petitioner's case. In *In re Grand Jury Subpoena*, the government conceded to the trial court that the grand jury's subpoena demanded irrelevant documents, and that a simple procedure, i.e., a "key word search," could be employed to reveal documents which were relevant to the grand jury's investigation. *Id.* In petitioner's case, the government made no such concession, nor could it – the information in police possession revealed only that petitioner was storing digital images of child pornography on a computer. It did not reveal whether petitioner was storing that information on a hard drive or on a disk, or in what format on those electronic storage devices.

Petitioner concedes that the Law Court's decision is in harmony with other decisions from the First, Ninth and Tenth Circuits. In *United States v. Upham*, 168 F.3d 532 (1st Cir. 1999), *cert. denied*, 119 S.Ct. 2353 (Jun. 14, 1999), the First Circuit, in a very similar case involving a seizure

of the defendant's entire computer system and disks to search for images of child pornography stored in the computer, stated, "A sufficient chance of finding some needles in the computer haystack was established by the probable cause showing in the warrant application; and a search of a computer and co-located disks is not inherently more intrusive than the physical search of an entire house for a weapon or drugs." *Id.* at 535.

In *United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 1571 (1998), the Ninth Circuit, in another case involving a seizure of the defendant's entire computer system and disks to search for images of child pornography stored in the computer, rejected an argument similar to the one raised here by petitioner that a warrant which described the computer equipment to be seized in generic terms and subjected it to blanket seizure was insufficiently particular to withstand Fourth Amendment scrutiny. *Id.* at 746. The court found that the generic description was acceptable because, as in petitioner's case, the police, while aware that the defendant had downloaded child pornographic images onto his computer, did not know whether the images were stored on the defendant's hard drive or on one of his many computer disks. *Id.*

Significantly, the Ninth Circuit also distinguished its *United States v. Kow*, 58 F.3d 423 (9th Cir. 1995) decision, which petitioner relies upon in this Court (*Petition* 12) , in which the court had invalidated a search warrant authorizing seizure of all of the defendant's records, including his computer hardware and software. *Lacy*, 119 F.3d at 746. The court observed that, unlike the affidavit in *Kow*, the affidavit in the *Lacy* case established probable cause

to believe the defendant's entire computer system was likely to evidence criminal activity. *Id.* As previously mentioned, petitioner has conceded before this Court that the affidavit established probable cause to believe that images of the minors would be found in petitioner's computer files. *Petition* 5, 7.

In *Davis v. Gracey*, 111 F.3d 1472 (10th Cir. 1997), the Tenth Circuit, in yet another case involving a warrant authorizing seizure of computer equipment to search for evidence of obscene material in the computer, rejected the defendant's argument that the warrant was overbroad because it allowed seizure of all "equipment" pertaining to the distribution or display of unlawful pornographic material. *Id.* at 1479. The court stated that the defendant's computer constituted evidence which fell within the allowable category. *Id.* The court also held that the warrant's limitation authorizing seizure of only equipment pertaining to a specified criminal activity sufficiently narrowed the officers discretion. *Id.* In petitioner's case the Law Court did not have to address the scope of the term "equipment" as the *Davis* court did because the warrant specifically authorized seizure of petitioner's computer equipment. *Pet. App.* 62. Additionally, as in *Davis*, the warrant in petitioner's case stated that the computer equipment, and the other items to be seized, were "evidence of the commission or attempted commission of the crimes of Sexual Exploitation of a Minor, Title 17, Section 2922 [sic], and Possession of Sexually Explicit Materials, Title 17, Section 2924 [sic]." *Pet. App.* 63.

More significantly, the Tenth Circuit rejected the defendant's argument, similar to the argument raised by petitioner in this case, that even if the seizure of the

computer itself was lawful, the concurrent seizure of the contents of the computer was unlawful because of the presence of innocent materials contained inside the computer. *Davis*, 111 F.3d at 1479. The court held that not only was the entire computer, including its contents, subject to seizure as a "container" for the evidentiary material found inside the computer; it also constituted an "instrumentality" of the offense itself. *Id.* at 1480. "The seizure of a container is not invalidated by the probability that some part of its 'innocent' contents will be temporarily detained without independent probable cause." *Id.* The court noted that there were "obvious difficulties attendant in separating the contents of electronic storage from the computer hardware during the course of a search." *Id.* The *Davis* court did state that the police should obtain a warrant prior to a search of the stored files in a seized computer. *Id.* Such a warrant was obtained in petitioner's case. *Pet. App.* 62-63.

Under these circumstances, where petitioner has not cited a single decision that truly conflicts with the Law Court's treatment of the Fourth Amendment's particularity requirement as it pertains to computer files, this Court should not use this case to address the issue for the first time.

II. THE MAINE DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENTS.

A. Fourth Amendment.

Petitioner does not, nor could he, assert that the Law Court misstated this Court's general law of Fourth Amendment particularity. In its decision the Law Court

stated, "A warrant must describe the property to be seized with such particularity that an executing officer will be able to identify it 'with certainty,' " and that "[t]he warrant can leave nothing to the discretion of the executing officer as to what is to be taken." *Pet. App.* 8 (*quoting State v. Pelletier*, 673 A.2d 1327, 1329 (Me. 1996)). *Pelletier* was actually citing this Court's decision in *Marron v. United States*, 275 U.S. 192, 196 (1927). Furthermore, the Law Court said, "[s]uch particularity discourages general searches and prevents the unauthorized seizure of property under the mistaken belief that it falls within the authorization of the warrant." *Pet. App.* 8 (*quoting State v. Sweatt*, 427 A.2d 940, 949 (Me. 1981)). The decision below, and *Sweatt* upon which it relies, are on all fours with *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), which prohibits general exploratory rummaging through a person's things. *See also Andresen v. Maryland*, 427 U.S. 463 (1976).

Rather, petitioner is asserting that the Law Court decision is inconsistent with the "intermingled documents" approach adopted by the Ninth Circuit in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982) (requiring further approval of magistrate for subsequent search of container including both documents specified in warrant and documents not specified in warrant), which this Court has never adopted and which is inconsistent with the approach adopted by a number of other circuits. *See, e.g., United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (seizure of container including both documents specified in warrant and documents not specified in warrant permissible), *cert. denied*, 523 U.S. 1079 (1998); *United States v. Schandl*, 947 F.2d 462 (11th Cir. 1991) (same), *cert. denied*, 504 U.S. 975 (1992); *United States v. Shilling*, 826 F.2d 1365

(4th Cir. 1987) (seizure criticized but allowed), *cert. denied*, 484 U.S. 1043 (1988), *overruled on other grounds*, 70 F.3d 113 (4th Cir. 1995); *United States v. Johnson*, 709 F.2d 515 (8th Cir. 1983). Indeed, the *Tamura* approach runs counter to this Court's precedents generally authorizing search of a container if there is probable cause to believe that the object of the search may be found therein. *See, e.g., Wyoming v. Houghton*, 119 S.Ct. 1297 (1999); *United States v. Ross*, 456 U.S. 798, 824 (1982).

Furthermore, petitioner would gain nothing if this Court should adopt the *Tamura* approach – the police below *did* obtain further approval from the magistrate after seizing petitioner's computer equipment. *Resp. App.* 1-7.

B. First Amendment.

With respect to First Amendment "scrupulous exactitude," petitioner concedes that this Court's decision in *Stanford v. Texas*, 379 U.S. 476 (1965), which established that standard, authorizes a less particular description for items presumptively protected by the First Amendment if the items are seized as evidence of a crime and not because of the ideas which they contain. *Petition* 14. The Law Court relied on that distinction in rendering its decision below, as have other courts. *Pet. App.* 11-12; *United States v. Stelten*, 867 F.2d 446 450-51 (8th Cir. 1989), *cert. denied*, 493 U.S. 828 (1989); *United States v. Layne*, 43 F.3d 127, 132-33 (5th Cir. 1995), *cert. denied*, 514 U.S. 1097 (1995); *United States v. Kufrovich*, 997 F. Supp. 246, 263 (D.Conn. 1997). Petitioner simply disagrees with the Law Court's distinction in this case.

III. THE FACTS OF THIS CASE STRONGLY SUGGEST THAT REVIEW BY THIS COURT IS UNWARRANTED.

Three facts strongly suggest that even if this Court were to review petitioner's case and decide the questions of law in petitioner's favor, the Court's decision would have no practical effect in petitioner's case. In essence, the Court would be issuing a mere advisory opinion.

First, the trial court expressly found that the "good faith" reliance by the police on the magistrate-issued warrant was objectively reasonable. *Pet. App.* 17. Petitioner does not challenge that finding before this Court. Thus, even if this Court should conclude that the Fourth Amendment had been violated, the exclusionary rule would not act as a bar to admission of the evidence seized in violation of the Fourth Amendment. *United States v. Leon*, 468 U.S. 897 (1984).

Second, petitioner entered a conditional guilty plea. *Petition* 6. Thus, there was no trial and none of the evidence whose "overbroad" seizure petitioner now complains about was ever admitted. *Shilling*, 826 F.2d at 1369 (no prejudice by overbroad execution of search warrant because the defendant pled guilty).

Third, even if items not covered by the September 30, 1997 warrant were seized (which respondent disputes), and even if the Court determines that the "good faith exception" should not apply for some reason, the remedy is not suppression of *all* of the items seized. Rather, the appropriate remedy is suppression of only those items which were not authorized by the warrant. *Id; See also Waller v. Georgia*, 467 U.S. 39, 44 n.3 (1984); *United States v.*

Hamie, 165 F.3d 80, 84 (1st Cir. 1999). Since the detached hard drive found in petitioner's basement, which provided the basis for the criminal charges in this case, was indisputably covered by the warrant (*Pet. App.* 62), any error in the seizure of items not found in the warrant would be harmless.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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RESPONDENT'S APPENDIX

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION OF
SO. CUMBERLAND

SUPERSEDING/SUPPLEMENTAL SEARCH WARRANT

TO: *Any officer authorized by law to execute this Search Warrant:*

On the basis of affidavit(s) by Detective Steven Reece of the Portland Police Department, of which affidavit(s) are attached to the original hereof and made a part thereof to be filed in the District Court;

I am satisfied that there is probable cause to believe that there are grounds for the initial seizure of the below-described items, for the continued seizure of the below-described items and for the issuance of a search warrant, authorizing the search of the below-described items in a manner similar to that authorized by Judge Christine Foster on 09/30/97. Because I am satisfied that there was a probable cause for the issuance of a search warrant for a search of the following;

1. VCR tapes with the following titles: VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

2. VCR tapes from the basement: VCR tapes from basement work area with the following titles:

"Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / East Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pom-pom," and one VCR tape with no label

3. Magazines in the basement work area: Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66," "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

4. All computer equipment and computer related equipment, including, but not limited to laptops,

monitors, key boards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operations of systems and programs, and materials stored therein/ thereon.

Now located at the Portland Police Department, 109 Middle Street, Portland, Maine; and previously seized from:

1. Peter Lehman, DOB 10/30/45

2. University of Southern Maine Sociology building and Maine Council on Economic Education building located at 120 Bedford Street, Portland, ME. The building is a 2 story, with white vinyl siding. The front entrance is to the left side of the building. There is a porch with a white storm door to the left of the door. On the trim is the number 120. The office of Mr. Peter Lehman is on the second floor.

3. University of Maine system network. This is the computer network system for the entire University of Maine. Including, but not limited to, the University of Southern Maine's computer center located at 96 Falmouth Street, Portland, Maine, which Peter Lehman would have been able to access and would have been able to store information.

4. 1993 Toyota Previa van, white in color, ME Registration #6188ZZ, VIN #JT3AC21S3P1016869, expiration date 09/30/97. The Department of Motor Vehicles has that plate listed to a Peter Lehman, DOB 10/30/45, of 452 South Street, Gorham, ME. Joint owner is listed as a Susan J. Olson.

5. 452 South Street, Gorham, ME 04038. Detective Robert Gaudette, known to me as a Gorham police detective, checked the Gorham tax records for that residence. It is described in tax records as 1 3/4 story residence with a 36'x26' main building and a 28'x24' garage. Det. Gaudette stated the residence color is a brownish/reddish stain. Theresa Peavey and Allison O'Leary stated that this home was brownish in color.

Pursuant to a search warrant issued by Judge Christine Foster. Based on the relationship between the 09/30/97 search warrant and the items/property requested to be searched pursuant to this search warrant, I further find and order as follows:

A. That law enforcement officers executing this search warrant and the 09/30/97 warrant (referenced herein), and those working at their direction/request, are hereby authorized to continue of the seizure of the property (described to be searched) beyond the ordinary ten (10) days to 12/08/97 and may have until 12/08/97 to return the inventory for the 09/30/97 search warrant and this search warrant.

B. That law enforcement officers executing this search warrant, and those working at their direction/request are authorized to continue of the seizure of the property and its search in either the daytime or nighttime.

C. That the description of property and evidence previously seized as described in affidavit(s) may be relocated from the Portland Police Department to such other facility as may assist in the execution of the search warrant.

YOU ARE HEREBY COMMANDED to continue the search in the manner described above the thing(s)/ item(s) described below for the property described below and, if the property is/are found, to seize such property and prepare a written inventory of the property seized.

Place(s)/Thing(s)/Item(s) to be Searched:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work are with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2/Easy Lover/Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners,"

"Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

All computer equipment and computer related equipment, including, but not limited to laptops, monitors, keyboards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operation of systems and programs;

All these items have previously been seized from Peter Lehman's residence at 452 South Street, Gorham, Maine; and his office at 120 Bedford Street, Portland, Maine; and the vehicle of Peter Lehman; and the person of Peter Lehman. These items are presently located at the Portland Police Department at 109 Middle Street, Portland, Maine.

Property or Articles to be Searched for:

There is probable cause to believe that the magazines, videos, computer equipment & related

equipment (described above) contain the following:

A. Photographs, video tapes, computer images of minors under 14 years of age, all of which are evidence of the offenses of Possession of Sexually Explicit Material and Sexual Exploitation of a Minor and which are seizable pursuant to Maine Rule of Criminal Procedure 41.

Name of Owner or Occupant of Place to be Searched, if known to affiant:

1. University of Southern Maine, main office located at 96 Falmouth St., Portland, Maine; also owning the building at 120 Bedford Street, Portland, Maine

2. Peter Lehman, DOB 10/30/45, owner of 1993 Toyota Previa, ME Reg. 6188ZZ, along with joint owner Susan J. Olson

3. Peter Lehman, DOB 10/30/45, owner of 452 South Street, Gorham, ME

DAYTIME WARRANT AND NIGHTTIME

This warrant shall be executed either in the DAYTIME or NIGHTTIME and shall be returned, together with a written inventory, within 10 days of the issuance hereof, to the SO CUMBERLAND Division of the NINTH District Court of the District Court of Maine.

Issued in the County of CUMBERLAND, State of Maine, this 10/10/97.

Time: 8:35

/s/ Christine Foster
State of Maine
District Court Judge

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION OF
SO. CUMBERLAND

IN RE:	)	Supplemental Affidavit
SEARCH WARRANT	)	& Request For
Me.R.Crim.P.41	)	Supplemental Search
	)	Warrant

Affidavit of PPD Detective Steven Reece

TO ANY JUDGE OF THE DISTRICT COURT OR JUSTICE OF THE PEACE:

I, Detective Steven Reece, being duly sworn on oath, state as follows:

I. That probable cause exists to believe that located in the materials described as:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work area with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / Easy Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She

Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schc olgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

All computer equipment and computer related equipment, including, but not limited to laptops, monitors, keyboards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operation of systems and programs, and materials stored therein/thereon.

All as removed from Peter Lehman's residence at 452 South Street, Gorham, Maine; and his office at 120 Bedford Street, Portland, Maine; and the vehicle of Peter Lehman; and the person of Peter Lehman presently located at the Portland Police Department at 109 Middle Street, Portland, Maine.

II. Photographs, video tapes, computer images of sexually explicit conduct involving minors

All of which are evidence of the offenses of Possession of Sexually Explicit Conduct and Sexual Exploitation of Minors and which are seizable pursuant to Maine Rule of Criminal Procedure 41.

III. The facts and circumstances which lead me to believe this are as follows:

A. I, Detective Steven Reece, have been assigned to investigate allegations against Peter Lehman of 452 South Street, Gorham, Maine.

1. A search warrant affidavit of Detective Steven Reece dated 09/30/97 made in support of a search warrant dated 09/30/97 issued by Judge Christine Foster.

2. A search warrant issued by Judge Christine Foster of District Court dated 09/30/97.

All of the above documents are attached hereto and incorporated therein by reference.

B. On or about 10/01/97, I, Detective Steven Reece, along with members of the Portland Police Department and the Gorham Police Department executed a search warrant on the residence of Peter Lehman, 452 South Street, Gorham, Maine; the 1993 Toyota Previa van, owned by Peter Lehman; 120 Bedford Street, Portland, Maine, the office of Peter Lehman, owned by the University of Southern Maine; and the person of Peter Lehman himself. The search warrant was issued by Judge Christine Foster on 09/30/97. While conducting the searches, magazines and video tapes in plain view with the following titles:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work area with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / Easy Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage

Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

Believing this to be potential evidence of the crime of Possession of Explicit Materials, it was seized.

C. In conclusion, your affiant, Detective Steven Reece, requests that the numerous video tapes, magazines and computer images seized pursuant to the search warrant of 09/30/97 be searched for sexually explicit depictions of minors under 14 years of age, in the same manner, and permit law enforcement officers to utilize the assistance of a medical expert versed in age determinations based on developmental characteristics. Because the computer equipment and numerous discs are already in possession of the Portland Police Department and no longer at the places searched, and in light of the enormity of the task confronting officers and the court and the execution of this warrant and in its time consuming nature, your affiant requests the following:

1. That this search warrant authorize the continuation of the seizure of property seized pursuant to the 09/30/97 search warrant and this warrant beyond the ordinary 10 days to 12/08/97, and that the inventories from the 09/30/97 search warrant and this warrant need not be returned before 12/08/97.

2. That this search warrant authorize the continuation of the seizure of the property in its search in either daytime and the nighttime.

3. That the magazines, videos, computer images, computer equipment and computer related equipment may be relocated from the Portland Police Department to such other facility as may assist in the execution of this search warrant.

4. That the search warrant be executed with the assistance of a medical expert versed in age determinations based on developmental characteristics.

WHEREFORE, I, Detective Steven Reece, your affiant, pray that a warrant may be issued authorizing the continued seizure and search of video tapes, magazines, computer images, computer equipment and other computer related equipment as described herein, and continued search of materials seized pursuant to the 09/30/97 search warrant issued by Judge Christine Foster.

I, Detective Steven Reece, do hereby swear under oath that the information set forth in this affidavit is true and correct to the best of my knowledge, information and belief.

Date: 10/10/97

/s/ Det. Steven A. Reece
Detective Steven Reece

Personally appeared before the above named, Steven A. Reece, and gave oath that the statements contained herein attributable to him are true when based on knowledge and belief, he believes them to be true.

/s/ Christine Foster
Maine District Court Judge or
Maine Justice of the Peace

Date: 10/10/97

Supreme Court, U.S.
FILED
JAN 6 2000
CLERK

(3)

No. 99-746

In The

Supreme Court of the United States

PETER LEHMAN,

Petitioner,

vs.

STATE OF MAINE,

Respondent.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Respondent's brief in opposition to the petition for a writ of certiorari argues that there is no conflict among the federal courts, that the decision of the court below fully comports with this Court's Fourth Amendment cases, and that harmless error and "good faith" would render any decision of this Court merely advisory. None of these arguments withstands scrutiny.

At the outset, several of respondent's factual assertions merit a brief rebuttal:

1. Respondent's assertion that the warrant limited the search to the part of the computer system that petitioner was able to access is without merit. The exact language of the warrant that described the places or persons to be searched included:

> University of Maine system network. This is the computer network system for the entire University of Maine. Including, but not limited to, the University of Southern Maine's computer center located at 96 Falmouth Street, Portland, Maine, which Peter Lehman would have been able to access and would have been able to store information [sic].

Petition for a Writ of Certiorari *("Pet. Wr.")* and Appendix *("Pet. App.") 61*. The plain language of the warrant refutes respondent's argument.

2. Respondent's contention that petitioner failed to assert that he had a reasonable expectation of privacy in the University's computer system is simply wrong. *See Pet. Wr. 13-14*. Whether the record establishes that the University consented to a search of its computers for the evidence sought by police, as asserted by respondent, moreover, is irrelevant to this proceeding. The linchpin in determining whether a warrant passes constitutional

muster is the breadth of the search that is afforded to the police through the explicit language articulated in the warrant. *United States v. Hotal*, 143 F.3d 1223, 1227 (9th Cir. 1998) ("if a warrant fails for lack of particularity or specificity, it is simply unconstitutional – without regard to what actually occurred."). The primary test is not how the police conducted the search, or what the search revealed, but, rather, what did the warrant authorize? The University's consent, furthermore, hardly authorized the wholesale privacy invasion that occurred here.

3. Contrary to respondent's contention that all the videotapes and magazines were rightfully seized as contraband, *Respondent's Brief in Opposition to Petition for Writ of Certiorari ("Resp. Br.") 2-3*, numerous items seized were irrelevant to any prosecution. For example, one of the videotapes seized by police was a videotape containing highly sensitive private family information about petitioner's granddaughter. That videotape was wholly unrelated to the charges brought against petitioner and should never have been seized. Further, the partial inventory of computer hardware and software, which respondent has conceded is accurate, lists approximately 542 computer related items that were in fact taken. *Pet. App. 19-55.*[1] Even assuming, *arguendo*, that some items in addition to the detached hard drive found in petitioner's basement would have been used by the prosecution had the matter gone to trial, respondent cannot establish that any of petitioner's personal financial files or his academic files or any of the commercial compact disks (*Pet. App. 21 et seq.*), manuals (*Pet. App. 23 et seq.*), other papers logged

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[1] Petitioner's identification of 408 items in his initial brief thus substantially understates the number of these items.

with "manuals", (*Pet. App. 28 et seq.*) or the 408 disks (*Pet. App. 28 et seq.*) would have been relevant in any way to respondent's case against petitioner.

4. Respondent's reliance on the second warrant issued by the district court on October 10, 1997, the "Superceding/Supplemental Search Warrant" and Affidavit in Support thereof, is misplaced. The fact that the second warrant authorized a continuation of the original search and seizure – and identified numerous items seized as a result of that original search – does not cure the defects of the original warrant.

I. THE MAINE LAW COURT'S DECISION CONFLICTS WITH THE DECISIONS OF THE LOWER FEDERAL COURTS

Respondent's attempt to distinguish the instant case from the conflicting federal court cases fails:

Contrary to respondent's assertion, the court in *United States v. Carey*, 172 F.3d 1268 (10th Cir. 1999), did hold that an intermediate step of sorting relevant from irrelevant files was required in order for the search to be constitutional. Specifically, the court held that searching and seizing computer files when the police knew or had reason to know that those computer files were different from the computer files for which there was probable cause (as reflected in the warrant) was a violation of the Fourth Amendment. Although in the instant case the warrant did allow the search and seizure of all computer files and computer-related items, both cases involve a police search of computer files that exceeds the probable cause that supported the original warrant.

In *In re Grand Jury Investigation Concerning Solid State Devices, Inc. v. United States*, 130 F.3d 853 (9th Cir. 1997),

the court was determining whether the warrant at issue exceeded in scope the probable cause on which it was based. Thus, the issue in that case was exactly the same as the one presented by petitioner – whether the existence of probable cause for a search of some items could be bootstrapped into a search of *all* computer files.[2]

Finally, in *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F. Supp. 11 (S.D.N.Y. 1994), the issue again was whether the scope of a subpoena was reasonable given the strictures of the Fourth Amendment. Although the court stated that it was not reaching the defendant's Fourth Amendment argument, the analysis conducted by the court included whether the subpoena at issue unnecessarily demanded documents that were irrelevant to the grand jury inquiry, and whether, therefore, the subpoena was unreasonably broad under the Federal Rules of Criminal Procedure. While the *source* of the standard came from the Federal Rules of Criminal Procedure, the *standard* was the same as that invoked in the Fourth Amendment analysis – i.e., whether the government's power to obtain documents, whether through subpoena or warrant, was "unreasonably broad." *See, e.g., Carroll v. United States*, 267 U.S. 132, 149 (1925); *Boyd v. United States*, 116 U.S. 616, 623 (1886) (both stating that the principal question in determining the constitutionality of a search and seizure is whether a compulsory production of private papers is unreasonable).

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[2] Contrary to respondent's repeated assertions, petitioner has never conceded there was probable cause to search all his computer files and systems for digital images of *any* minors or any other materials. *See Pet. Wr. 7.*

II. THE MAINE COURT'S DECISION IS NOT CONSISTENT WITH THIS COURT'S PRECEDENTS

Respondent is correct in stating that petitioner does not assert that the Maine Law Court misstated this Court's general law of Fourth Amendment particularity. However, the Law Court's analysis was incomplete and failed to take into account critical parts of this Court's Fourth Amendment jurisprudence.

Contrary to respondent's assertion, *Resp. Br. 14-15*, petitioner is not arguing simply that the Court should hear this case because the lower court's decision is inconsistent with the "intermingled documents" approach adopted by the Ninth Circuit in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982) – although it is true that the Law Court's decision is inconsistent with *Tamura*. Rather, the Law Court failed to adhere to this Court's prohibition against general warrants and searches that grossly exceed the probable cause upon which they are based, *see, e.g., Maryland v. Garrison*, 480 U.S. 79, 84 (1987), and to the mandate of *Stanford v. Texas*, 379 U.S. 476 (1965), which requires "scrupulous exactitude" in the description of the items to be seized when the First Amendment is at issue.

This Court has consistently interpreted the particularity requirement of the Fourth Amendment as requiring probable cause to support the specific areas and things to be searched, in order to prevent the types of "general warrants" that the Framers intended to prohibit. *See, e.g., Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971); *Maryland v. Garrison*, 480 U.S. 79, 84 (1987) ("The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement insures that the

search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit"). In petitioner's case, and even more frequently with other citizens as their personal papers and effects become more computerized, the Fourth Amendment privacy concerns posed by computers and computer systems requires exceptional attention to the particularity requirement; a failure to do so will result in the evisceration of the Fourth Amendment.

The First Amendment implications of searching and seizing petitioner's personal computers, as well as the entire computer system of the University of Maine, were also completely ignored by the Law Court. This Court has long held that the search and seizure of a man's private papers is totally different from the search and seizure of stolen goods or other physical objects. *Boyd*, 116 U.S. at 623; *Carroll*, 267 U.S. at 147-149; *Stanford*, 379 U.S. at 484-485. Where, as here, entire computer systems that contain hundreds if not thousands of documents, personal papers and academic teaching materials, all of which lie at the heart of the First Amendment, are being searched, the Law Court's holding that the warrant at issue passed constitutional muster cannot stand.

III. THE "CONTAINER" ANALOGY OVERSIMPLIFIES THE COMPLEXITIES OF WHOLESALE COMPUTER SEARCHES AND IGNORES THE CONSEQUENCES OF SUCH SEARCHES TO FIRST AMENDMENT RIGHTS

To avoid the Fourth and First Amendment complexities raised by the computer search here, respondent fall

back on the "container" exception. This Court should reject the "container" analogy advocated by respondent and instead embrace the "intermingled documents" approach sanctioned by several lower courts and academics.

Respondent cites *Wyoming v. Houghton*, 119 S.Ct. 1297 (1999), and *United States v. Ross*, 456 U.S. 798, 824 (1982), for the proposition that containers may be searched where there is probable cause to believe that the object of the search will be found therein. In both *Wyoming v. Houghton*, and *Ross*, this Court approved warrantless searches of containers that were located in cars or on passengers riding in cars and that contained illegal drugs.

The comparison of petitioner's case to the search of simple containers in or on automobiles or their passengers, which are situations in which this Court has consistently held citizens have a reduced expectation of privacy, simply fails to acknowledge or address the complexities of broad computer searches, including the First Amendment consequences of those broad searches. This approach likens computer hardware, software and systems to a simple box that does nothing more than hold and protect its contents. Because computers and computer systems are far more complicated to search than simple boxes, the standards that have been developed for searching and seizing information that is part of a larger group of items which are presumptively protected by the First Amendment should be required.

In this case, furthermore, the vast majority of the items seized were not evidence of a crime but were irrelevant to the investigation. Respondent's reiteration of certain videotapes and magazines that were purportedly relevant to the investigation does not remedy that

problem. Respondent still cannot dispute that over 500 computer-related items were seized which were irrelevant to the prosecution of the alleged crimes. That number, in fact, is conservative because the inventory done was only a partial inventory, and, for example, does not include all of petitioner's academic materials, letters, personal papers and other computer files that were seized by police.

In order to prevent the kind of overzealous and unnecessary seizure of personal papers, documents and professional materials that may be kept on a computer, this Court should adopt the approach articulated in *Tamura*, 694 F.2d at 595, 596, which would require an objective magistrate to issue a second warrant further limiting the search of computers or computer systems. While respondent points to the Supplement/Superceding Warrant of October 10, 1997 as proof that this requirement was satisfied, a closer look at the second warrant reveals that it did nothing to *limit* which computer files could be viewed. Instead, it merely authorized the continuation of the search and seizure of all computers and computer-related equipment, including the irrelevant information already seized by the police.

IV. A REVERSAL OF THE MAINE COURT'S DECISION WILL NOT BE MERELY AN ADVISORY OPINION

Contrary to respondent's argument, grant of the petition and reversal of the decision below will not be a meaningless advisory opinion. The good-faith exception to the exclusionary rule as articulated in *United States v. Leon*, 468 U.S. 897 (1984), has no application to the broad Fourth Amendment policies at stake here – if searches of

entire computer systems are not lawful, judicial officers and law enforcement officers need a clearly articulated rule to ensure that such searches do not take place. Such a decision is hardly meaningless. Moreover, whether the exclusionary rule should then be applied is a separate question which, in light of the First Amendment interests implicated here, should be answered affirmatively. *Leon* did not involve any First Amendment considerations and in fact recognized explicitly that warrants "so facially deficient – i.e., in failing to particularize the place to be searched or the things to be seized – that the executing officers cannot reasonably presume it to be valid," *Leon*, 468 U.S. at 923, could not be used to justify a good faith exception.

Respondent's claim about petitioner's conditional guilty plea is equally unavailing. If respondent's argument were correct, then the conditional plea would be meaningless, since it would never result in any different outcome than an ordinary plea of guilty. Moreover, unlike *United States v. Shilling*, 826 F.2d 1365 (4th Cir. 1987), *overruled on other grounds by United States v. Starkes*, 32 F.3d 100 (4th Cir. 1994), relied upon by respondent, where the court determined that the evidence in question had been lawfully seized, the evidence here was unlawfully seized.

Finally, the type of search conducted by police amounted to a general search, which requires suppression of all fruits. *United States v. Rettig*, 589 F.2d 418, 423 (9th Cir. 1978). Harmless error cannot be invoked in this circumstance. If any of the evidence has to be suppressed, moreover, petitioner is entitled to know what evidence will be suppressed and what evidence will ultimately be admissible before determining whether to enter a guilty

plea or go to trial. Further proceedings in the trial court, accordingly, at a minimum would be required on this issue.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated at Portland, Maine this 6th day of January, 2000.

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